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THE WATER RESOURCES COUNCIL

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STATEMENT

This report was prepared by the staff of the National Water Commission to provide background for the Commission's deliberations on the subject of national water policy. It has not been approved by the Commission but is released at this time through the National Technical Information Service to stimulate public discussion of water resource policy issues. Your comments and suggestions will be appreciated.

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THE WATER RESOURCES COUNCIL

Table of Contents

Page

Preface

Summary

I. Introduction 1

II. The Water Resources Planning Act 2

- A. Duties of the Water Resources Council 3
- B. River Basin Commissions 5
- C. Grants to States 8
- D. Interagency and Ad Hoc Coordinating Committees 9
- E. Goals of the Act 10

III. Historical Background 11

- A. The Nineteenth Century 11
- B. The Progressive Era to the New Deal 15
- C. The New Deal 24
- D. The Federal Inter-Agency River Basin Committee (FIARBC) 26
- E. The Interagency Committee on Water Resources (ICWR). 29
- F. Congressionally Directed River Basin Surveys in the 1950's 30
- G. Recommendations of Commissions and Committees (1947-1956) 32
- H. Recommendations of the Senate Select Committee on Water Resources 35
- I. Legislative History of the Water Resources Planning Act 37

IV. The Water Resources Council 49

- A. Formal Organization and Structure 49
  - 1. Membership and Decisionmaking Structure 49
  - 2. The Staff, Committees, and Task Forces 53
- B. Establishing the Council Mechanism 60
- C. How Issues Arise 64

Page

D. Activities.. 69

1. Introduction.................................... 69
2. Establishing River Basin Commissions............ 69
3. Relations Between the Council and the River Basin Commissions...................... 72
4. The National Assessment......................... 74
5. Development of Water Resources Plans............ 76

a. Framework, River Basin, and Single-Purpose Studies.......................... 76
b. Coordinating Mechanisms..................... 80
c. The New Planning Policy..................... 81
d. The Western United States Water Plan........ 85
e. OBERS Projections........................... 89
f. Central Funding............................. 91
g. Improving Federal, State, Local, and Private Cooperation...................... 94
h. Coastal Zone and Related Land Use Planning.. 101
i. Wild and Scenic Rivers...................... 102
j. Priorities Reports.......................... 104

6. Grants to States................................ 105

a. Consolidated Grants......................... 108

7. Principles and Standards for Planning Water and Related Land Resources................... 109

a. The Discount Rate........................... 113

8. Flood Hazards................................... 117

a. Implementation of Executive Order 11296..... 117
b. A Uniform Technique for Determining Flood Flow Frequencies................... 119
c. A Unified National Program for Flood Plain Management......................... 120
d. Federal Stimulation of State and Local Flood Plain Regulation................... 121

9. Compacts.. 122

a. Coordinating Federal Participation in Compact Negotiation and Administration.... 123
b. Developing a Federal Position on the Susquehanna River Basin Compact.......... 127

Page

10. Cost-Sharing.................................... 128
11. International Activities........................ 130
12. The National Water Commission................... 132

E. Authorizations and Appropriations................... 133
F. A Land and Water Resources Council.................. 135
G. Water Pollution Planning............................ 139
H. A Department of Natural Resources................... 139

V. Evaluation.. 147

A. The Assumptions Underlying the Water Resources Planning Act.. 147
B. The Limits of Coordination.......................... 150
C. The Mandates of the Act............................. 154

VI. Recommendations....................................... 171

Appendix: Water Resources Planning Act..................... 186

Footnotes.. 197

PREFACE

This report on The Water Resources Council was prepared for the National Water Commission to help it in its deliberations on national water problems.

During the period September 1968 through February 1970 the author was on the staff of the Water Resources Council, first as Deputy Legal Advisor and then as Legal Advisor. In that capacity he participated in the staff work and attended meetings of the Council members and their representatives, thus experiencing at first hand the operations of the Council.

This immersion brought insight, judgments, and a point of view to this study which could not have been obtained solely by interviews and by reading documents. The author hopes his experience at the Council has not produced any bias either for or against the Council. In any event, the reader is forewarned.

Ernst Liebman

Arlington, Virginia
May 19, 1972

SUMMARY

In 1965 Congress passed the Water Resources Planning Act by which Congress sought to establish the coordination of water resources activities at the national level in a more comprehensive way than had been attempted in the past. The task of coordination, as well as the immense job of appraising water policies and programs and of planning for the conservation and development of the nation's water resources, was given to a newly created Water Resources Council, consisting of the Secretaries of Interior, Agriculture, Army, and Health, Education and Welfare and the Chairman of the Federal Power Commission.

This report considers (1) the historical background out of which the need arose to coordinate federal and state water resources activities, (2) the goals of the Water Resources Planning Act, and (3) the activities of the Water Resources Council. The report then evaluates the Council and its activities and concludes with specific recommendations for improving the Council.

The ideas which underlie the Water Resources Planning Act have roots going back to the beginning of the nineteenth century when the federal government first became involved in water resources activities. The report reviews the development of federal involvement in water resources and the increasing need to coordinate the activities of the various federal water agencies.

In the early 1800's the Army Corps of Engineers began its program of navigation improvements. By the middle of the nineteenth century the federal government was making surveys of flooding problems. The

Department of Interior became involved in water resources development with the passage of the Reclamation Act of 1902, and the Department of Agriculture followed shortly thereafter with the transfer of the forest reserves to it from the Department of Interior in 1905. The Federal Power Commission, composed of the Secretaries of War, Interior, and Agriculture, was established in 1920 to issue licenses to non-federal developers of hydroelectric power on navigable streams. In 1925 Congress directed the Corps and the FPC jointly to prepare and submit an estimate of the cost of making examinations and surveys on navigable streams where power development appeared feasible; this list was printed in 1927 in House Document No. 308 and thereafter many of the proposed surveys were authorized by the Congress.

Some basic ideas found in the Water Resources Planning Act of 1965 were emerging from this federal effort. Water programs were viewed as having effects beyond the direct uses of water, the river basin was becoming the important unit for water planning and development, and the concept of comprehensive multipurpose development was emerging through the implementation of the Reclamation Act, the Federal Power Commission surveys, the Corps' 308 surveys, and the licensing activities of the Federal Power Commission.

Beginning in 1908 a series of reports from various federal water study commissions stressed the need to coordinate the various water activities of the federal agencies. Congress and the Executive Branch responded in varied and sporatic ways. Congress sometimes made statements in specific legislative acts that two or three water agencies coordinate their efforts. Executive efforts at coordination of water activities usually took the form of various interagency committees.

By 1939 a "Tripartite Agreement" had been concluded between the Army Chief of Engineers, the Commission of Reclamation, and the Land-Use Coordinator of the Department of Agriculture, providing for consultation in the preparation of river basin surveys. The Tripartite Agreement gave way in 1943 to a new agreement establishing the Federal Inter-Agency River Basin Committee (FIARBC) which was reconstituted in 1954 as the Interagency Committee on Water Resources (ICWR). These committees established a number of inter-agency committees, composed of federal and state agencies, to undertake plans for various river basins.

Congress made some attempt through legislation in the 1950's to similarly coordinate planning in two river basins. In 1958 it established the Texas Basin Study Commission to draw up comprehensive river basin plans for eight Texas rivers and the Southeast Basin Study Commission to develop comprehensive plans for five rivers in the Southeast.

Various water study commissions in the 1940's and 1950's made recommendations regarding coordination, some of which found their way into the Water Resources Planning Act. A number of these commissions recommended that river basin commissions be established throughout the United States, composed of federal and state agencies, to develop river basin plans. In addition, the Senate Select Committee on Water Resources recommended in 1961, among other things, that there be a federal program of grants to states for water planning.

The Water Resources Planning Act of 1965, in establishing a council of cabinet officers, directs them to accomplish two major goals. The first is the development of river basin plans for the major river basins throughout the nation so that solutions to water problems may take place in accordance with the plans. Such plans are to be comprehensive, coordinated and developed jointly by interested federal agencies, states, localities, and private groups through the device of a river basin commission.

The Act specifies five duties of the Council by which the Council is to help the water planning and implementation process: (1) establishing river basin commissions; (2) preparing biennial assessments of the water supply situation in various regions throughout the United States; (3) developing principles, standards, and procedures to be used by federal participants in preparing river basin plans and for the formulation and evaluation of federal water projects; (4) reviewing the plans submitted by the river basin entities, commenting on them, and then forwarding them to the President (who is also to comment and then to forward them to the Congress, where they should form the basis of project authorization and appropriations); and (5) making financial grants to states to develop their water planning capabilities.

A second major goal of the Act is to ensure that federal water policies and programs, river basin plans, and coordinating mechanisms are adequate to meet water requirements throughout the nation. To meet this goal, the Council is to study and appraise: (1) the adequacy of existing and proposed federal water policies and programs to meet the requirements of the various regions of the nation, (2) the relation of river basin plans and programs to the requirements of these regions, and (3) the administrative and statutory means of coordinating these federal policies and programs.

The report discusses the way the Council mechanism operates, the way decisions are made, and the major activities which the Council has undertaken.

The Council took over the functions of ICWR and inherited its ad hoc coordinating committees and field committees. It helped to establish seven river basin commissions; thirty-two states are now members of one or more of them. In 1968 the Council made a national assessment of the adequacy of water supplies necessary to meet the water needs of the various regions of the United States, and a new assessment effort is under way. Twenty comprehensive river basin plans encompassing the nation (excluding Alaska) are being developed. A program of grants to states for augmented water planning has been carried out. The Council has developed proposed principles and standards for federal participants in the preparation of comprehensive regional or river basin plans and for the evaluation of federal water projects. A discount rate for project evaluation has been established. The Council has carried out several activities to alleviate the consequences of floods. It has played an important role in coordinating a federal position on federal-interstate compacts.

The report explores the future of the Council in light of pending legislation (1) to combine land and water planning, (2) to give the Council a role in the preparation of basin plans for water treatment management, and (3) to establish a Department of Natural Resources.

The report then evaluates the activities of the Council. The report concludes that the Council generally has carried out the goal of the Act to develop river basin plans for the major river basins of the nation, although many improvements need to be made in the planning process. On the other hand, with some exceptions the Council has not carried out the goals of the Act to ensure that federal water policies and programs, river basin plans, and coordinating mechanisms are adequate to meet requirements throughout the nation. In particular the Council has shied away from difficult issues and has not reviewed federal policies and programs, largely because the Council mechanism is not adequate for this task. The member agencies of the inter-agency council are not likely to face difficult issues, the resolution of which may hurt the agencies. And even if issues are faced, no resolution by the Council may be possible since the Council has no enforcement powers.

The report then makes a number of recommendations for improving the Council:

Recommendation 1: The Council should have an independent full-time chairman, who is of equal status with members of the President's cabinet; he should be on the White House Staff and have access and report directly to the President; the Council should be placed within the Executive Office of the President.

Recommendation 2: Each person who serves on the Council of Representatives should report within his department or agency directly to the Council member or to his alternate.

Recommendation 3: An independent board of review should be established: (1) to help the President review all plans developed under the auspices of the Council and sent to the President, in accordance with Section 104 of the Water Resources Planning Act, "for his review and transmittal to the Congress with his recommendations in regard to authorization of Federal projects," and (2) to review all proposals for projects from the Federal agencies in light of river basin plans and other national considerations.

Recommendation 4: The Federal contributions for all water resources planning studies being conducted under the auspices of the Council by interagency and ad hoc committees and river basin commissions should be centrally funded by the Water Resources Council, with Congress appropriating monies for such studies directly to the Council, and the Council made responsible for assigning studies and funds.

Recommendation 5: The grant program in Title III of the Water Resources Planning Act should be extended for at least five years beyond the statutory expiration date in the Water Resources Planning Act, and the present statutory ceiling of $5 million per year should be removed.

Recommendation 6: All applications emanating in any one year from various agencies of a particular state which seek Federal funds for water and related land resource planning and programs should be consolidated into a single grant application and submitted to the Water Resources Council for its coordination of the grants of Federal agencies from whom monies are sought.

Recommendation 7: If Congress enacts legislation to establish a program of Federal grants to states for improving state land use planning, it should make adequate provision in that legislation for coordinating that program with water resources planning at the state and Federal levels.

Recommendation 8: The Secretary of Commerce, the Secretary of Housing and Urban Development, and the Administrator of the Environmental Protection Agency should be made statutory members of the Water Resources Council; the Secretary of Health, Education and

Welfare need no longer be a statutory Council member and should be an associate member; the Water Resources Planning Act should be amended to achieve these ends.

Recommendation 9: Congress should enact appropriate legislation giving to the Chairman of the Water Resources Council the responsibility for coordinating Federal participation in the negotiation and administration of water compacts.

THE WATER RESOURCES COUNCIL

I. INTRODUCTION

Water resources activities in the federal government are widely scattered. At least nine federal departments,[1] seven independent agencies,[2] five offices and councils in the Executive Office of the President,[3] and nine federal-state commissions are involved.[4] Within a single federal department, such as the Department of Interior, water related responsibilities may be found in more than a dozen separate bureaus or offices. Thus if we count entities at the sub-departmental level, there are well over fifty federal bureaus, offices, councils, independent agencies, and commissions dealing with water and related land resources.[5] In addition to the water activities of the federal government, each of the fifty states has numerous agencies administering water resources programs and policies.

The need to coordinate the various water programs and policies of the federal and state governments was recognized decades ago. Congress and the Executive Branch at various times tried to solve the coordination problem, but their attempts generally were sporadic and unsuccessful. Finally in 1965 Congress passed the Water Resources Planning Act,[6] by which it sought to establish that coordination in a more comprehensive way than it had been done in the past. The task of coordination, as well as the immense job of appraising water policies and programs and of planning for the conservation and development of the nation's water resources, was given to a newly created Water Resources Council, consisting of the Secretaries of Interior, Agriculture, Army, and Health, Education and Welfare, and the Chairman of the Federal Power Commission.[7] The Secretary of Transportation was added to the Council two years later in 1967.[8]

In addition to regular statutory members, Council regulations provide for associate members and observers. Associate members now include the Secretary of Commerce, the Secretary of Housing and Urban Development, and the Administrator of the Environmental Protection Agency. Non-statutory associate members may participate in Council meetings, but the concurrence of such members in a decision of the Council is not required.[9]

A number of observers also may attend Council meetings:[10] The Attorney General, the Chairman of the Council on Environmental Quality, the Director of the Office of Management and Budget, and the Chairmen of the seven river basin commissions established under Title II of the Water Resources Planning Act.[11]

Few federal agencies dealing with water and related land resources are not represented by this array.

II. THE WATER RESOURCES PLANNING ACT*

Section 2 of the Act declares that in order to meet the rapidly expanding demands for water throughout the nation it is the policy of Congress "to encourage the conservation, development, and utilization of water and related land resources of the United States on a comprehensive and coordinated basis by the federal government, states, localities, and private enterprise with the cooperation of all affected federal agencies, states, local governments, individuals, corporations, business enterprises, and others concerned."[12]

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* The Water Resources Planning Act is appended to this report as **an Appendix.**

A. Duties of the Water Resources Council

After this declaration of policy, some disclaimers as to the effect of the Act on existing laws, and prohibitions concerning studying, planning, or recommending certain interbasin transfers,[13] the Act formally spells out nine duties of the Council:

1. Maintain a continuing study and prepare an assessment biennially, or less frequently if appropriate, of the adequacy of supplies of water in the various regions of the United States;[14]

2. Maintain a continuing study of the relation of regional river basin plans and programs to the requirements of larger regions of the nation;[15]

3. Maintain a continuing study of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several federal agencies;[16]

4. Appraise the adequacy of existing and proposed policies and programs to meet the requirements of larger regions of the nation (mentioned in paragraph 2 above);[17]

5. Make recommendations to the President with respect to federal policies and programs;[18]

6. Establish with the approval of the President principles, standards, and procedures (a) for federal participants in the preparation of comprehensive regional or river basin plans and (b) for the formulation and evaluation of federal water and related land resources projects (such procedures may include provision for Council revision of plans for federal projects intended to be proposed in a plan or revision thereof by a river basin commission);[19]

7. Participate in the creation, operation, and termination of river basin commissions;[20]

8. Review the plans or revisions thereof from any river basin commission established under the Act and, based on that review, transmit the Council's recommendations, together with the plan and the views, comments, and recommendations submitted by any federal agency, governor, interstate commission, or United States section of an international commission, to the President for his review and transmittal to the Congress with his recommendations in regard to authorization of federal projects;[21]

9. Make financial grants to states over a period of ten years to assist them in developing and participating in the development of comprehensive water and related land resource plans.[22]

B. River Basin Commissions

Title II of the Act elaborates the ways in which river basin commissions are to be established, operated, and terminated, and also sets out some of the relationships of river basin commissions to the Council.[23/]

The President by executive order establishes a river basin commission upon written request of the Council or a state. The concurrence of the Council and at least one-half of the states in the basin or basins involved is an essential condition to establishment (with two exceptions).[24/]

A commission is composed of (1) a Presidentially appointed chairman who also serves as chairman and coordinating officer of the federal members; (2) members from each federal department or independent agency having a substantial interest in the work of the commission; (3) one member from each state in the territorial area covered by the commission; (4) one member from any interstate compact agency whose jurisdiction extends to the waters of the area for which the river basin commission is created; and (5) when deemed appropriate by the President, one member from the United States section of any international commission created by treaty whose jurisdiction extends to the river basin commission area.[25/]

The duties of a commission are to (1) serve as the principal agency for the coordination of federal, state, interstate, local, and non-governmental plans for the development of the water and related land resources in its area; (2) prepare and keep up-to-date a comprehensive, coordinated, joint plan for federal, state, interstate, local, and non-governmental development of water and related land resources (the plan is to include an evaluation of all reasonable alternative means of achieving optimum development of water and related land resources including recommendations with respect to individual projects); (3) recommend long-range schedules of priorities for collection and analysis of basic data and for investigation, planning, and construction of projects; and (4) foster and undertake studies necessary in the preparation of the plan.[26/]

A river basin commission also is to engage in such activities and make such other studies and investigations as are necessary and desirable in carrying out the general policy declaration of the Water Resources Planning Act in Section 2, and in accomplishing its statutory duties.[27/]

In addition, a commission is to submit to the Water Resources Council for transmission to the President and by him to the Congress and the Governors and the legislatures of the participating states "a comprehensive, coordinated, joint plan, or any major portion thereof, or necessary revisions thereof, for water and related land resources development in the area, river basin, or group of river basins for which such commission was established.[28/]

Finally, at the time it submits its plan, a river basin commission is to submit to the Water Resources Council any recommendations it may have for continuing the functions of the commission and for implementing the plan, including means of keeping the plan up-to-date.[29]

River basin commissions are somewhat novel entities in the federal system. They are created by and receive their funds from both the United States Congress and the member states. They are thus federal-state entities, somewhat akin to federal-interstate compact commissions, such as those established for the Delaware and the Susquehanna river basins.[30]

Within a commission decisions are made under a "consensus" rule. The Water Resources Planning Act specifically provides:

> "In the work of the commission every reasonable endeavor shall be made to arrive at a consensus of all members on all issues; but failing this, full opportunity shall be afforded each member for the presentation and report of individual views. . ."[31]

If a commission fails to act by reason of absence of consensus, the positions of the chairman, acting for the federal members, and the vice-chairman, acting for the state members, are to be set forth in the record.[32]

The basic idea underlying the consensus provision is a recognition that the federal government and the states on a Title II river basin commission are sovereign, and neither the federal government nor a state can be compelled by a majority vote to do what it does not desire to do.[33] The philosophy of the Act is that in formulating river basin plans the members of such a commission should seek general agreement whenever possible; if there are differing views, they should be set forth in the record and the differences resolved by higher authorities such as the President and Congress, and the Governors and legislatures of the involved states.[34]

C. Grants to States

Title III of the Act[35] sets forth the procedures and conditions under which the Council administers a grant program to states to increase their participation in the development of comprehensive water and related land resources plans. The Act authorizes a maximum of $5,000,000 per year in grants to states over a ten year period.[36] The Council is to establish procedures for the coordination of its grant program with related federal planning assistance programs.[37] Allotments to states are to be made on the basis of population, land, financial need, and the need for state comprehensive water and related land resource programs.[38] To qualify for Council grants, states must have programs for comprehensive water and related land resource planning which take into account prospective water demands, which provide for coordination with all federal, state, and local agencies and non-governmental entities having responsibilities in affected fields, and which provide for coordination between comprehensive water resources planning and other statewide planning programs.[39]

D. Interagency and Ad Hoc Coordinating Committees

While the Act specifies nine formal duties for the Council, an additional duty was given to the Council by the President on March 29, 1966, when he abolished the Inter-Agency Committee on Water Resources (ICWR). The Committee had been created on May 26, 1954, with Presidential approval by an interagency agreement between the Secretaries of Interior, Agriculture, Commerce, Army, and Health, Education and Welfare. The main purpose of ICWR was to improve facilities and procedures for the coordination of the policies, programs, and activities of those federal agencies principally concerned with the planning, construction, and operation of water and related land resource developments.[40/]

At the same time that he abolished ICWR, the President placed the existing subcommittees and the field committees of ICWR under the Council.[41/] The Council thus inherited supervision of the following six field committees: Columbia Basin Inter-Agency Committee, Missouri Basin Inter-Agency Committee, Pacific Southwest Inter-Agency Committee, Arkansas-White-Red Inter-Agency Committee, Northeast Resources Committee, and Southeast Basins Inter-Agency Committee; and some sixteen ad hoc coordinating committees. All of these committees were engaged in some types of river basin planning at the time they came under the aegis of the Council.[42/]

E. Goals of the Act

The Water Resources Planning Act coupled with the transfer of ICWR's field and subcommittees to the Council establishes a framework for achieving basically two goals.

The first goal is the development of river basin plans for the major river basins throughout the nation. The plans are to be developed jointly by the interested federal agencies, states, localities, and private groups in the basin, through the device of river basin commissions, if they can be established, or through existing interagency committees or other entities. Plans are to be comprehensive and coordinated. Participation in the planning process by private enterprise and by other public groups is encouraged.

The Council is to help the planning process at the river basin level (1) by preparing biennial assessments of the water supply situation in various regions throughout the United States; (2) by helping to set up river basin commissions; (3) by developing principles, standards, and procedures to be used for the federal participants in preparing river basin plans and for the formulation and evaluation of federal water projects; (4) by reviewing the plans submitted by the river basin entities, commenting on them, and then forwarding them to the President (who is to comment and forward them to Congress, where they should form the basis for project authorization and appropriations); and (5) by making financial grants to states to develop their planning capabilities.

A second goal of the Planning Act--not unrelated to the first goal of developing joint, comprehensive, and coordinated river basin plans--is to ensure that federal water policies and programs, river basin plans, and coordinating mechanisms are adequate to meet water requirements throughout the nation. The Council is to study and appraise (1) the adequacy of existing and proposed federal water policies and programs to meet the requirements of the various regions of the nation, (2) the relation of river basin plans and programs to meet the requirements of these regions, and (3) the administrative and statutory means of coordinating these federal policies and programs. The Council is specifically required to make recommendations to the President with respect to federal policies and programs.

III. HISTORICAL BACKGROUND

A. The Nineteenth Century

The concepts which underlie the Water Resources Planning Act developed over several decades.[43/] Before the beginning of the Nineteenth Century almost all waterway improvements had been undertaken by state governments and private companies. With the westward movement, pressures began to grow for the federal government to undertake a program of transportation improvements.[44/] After the Louisiana Purchase in 1803, the Senate asked Albert Gallatin, Secretary of the Treasury, for a national plan for the development of roads and canals. The Gallatin Report of 1808 proposed, among other internal improvements, a complete, nationwide system of canals and river improvements.[45/]

Gallatin's report had no immediate effect due in part to a constitutional dispute as to whether the federal government could undertake internal improvements under its constitutional power to regulate commerce. Even after the constitutional issue was partially decided by the United States Supreme Court in Gibbons v. Ogden,[46/] where the Court asserted that the power of Congress to regulate interstate commerce included a power over navigation, the propriety of the federal government generally undertaking internal improvements remained a political issue for over a century.[47/]

Gibbons v. Ogden did give consitutional sanction for federal development of the nation's waterways. In the same year of that decision, 1824, Congress passed legislation for clearing channels in the Ohio and Mississippi Rivers, and this legislation began the modern program of federally operated and financed navigation improvements.[48/]

The program of navigation improvements, which began in the 1820's, was carried out by the Corps of Engineers of the United States Army, which became the first federal water planning agency. The General Survey Act,[49/] passed by Congress in 1824, empowered the President to employ civil engineers and officers of the Corps to make survey reports and estimates of such roads and canals as the President might deem to be of national importance. Pursuant to this legislation the Corps planned and executed such major works as The Chesapeake and Ohio Canal and the completion of the Cumberland Road.[50/]

Corps planning responsibilities for rivers and harbors improvements were not authorized generally by the General Survey Act, but were authorized by separate acts of Congress. The first omnibus Rivers and Harbors Act, which authorized specific improvements and new surveys, was enacted in 1826.[51/] This Act, giving separate authorization for the planning phases of some projects and the construction phases of others, became the prototype of the enabling legislation of the Corps' navigation improvements program and later its flood control program. Prior to the Civil War, however, federal appropriations for the improvement of rivers and harbors were not large.[52/]

In 1884, Congress passed general navigation legislation directing that no survey be made of any harbors or rivers until the district engineer ascertained that the harbor or river was worthy of improvement. The purpose of the legislation was to avoid the costs of a full examination and survey and of making estimates in cases where there was political pressure for an improvement which was likely to have no commercial potential.[53/]

Federal flood control activities began later than federal navigation development. With the settlement of the lower Mississippi

Valley flood damages increased. Congress responded slowly, at first limiting its activities to surveying and planning, but not construction, of flood control works or levees. In the 1850's and 1860's the Corps undertook surveys of flood problems of the Mississippi, and reported the need for extensive levee construction.[54]

In 1874, after a disastrous Mississippi flood, Congress appointed a commission of engineers to report a permanent plan for the reclamation of that part of the Mississippi Valley subject to flooding. The report discussed alternative flood control methods and criticized the uncoordinated and ineffective local levee construction program.[55]

In 1879 a Mississippi River Commission was established to survey the river and prepare plans to improve navigation and prevent floods.[56] It was composed of three members from the Corps, one from the Geological Survey, and three persons from civil life. A similar commission, the California Debris Commission, composed of three members from the Corps, was established in 1893. It was directed to prepare plans for the Sacramento and San Joaquin river systems to prevent flooding and protect navigability from encroachment of hydraulic mining debris.[57]

Thus by the end of the Nineteenth Century, the Corps of Engineers was engaged in several surveys and in planning studies for navigation and flood control, the river basin had become the appropriate unit for surveys and planning, and the rudiments of some kind of review of what surveys should be undertaken had developed. In addition, the Corps was heading up planning groups, consisting of non-Corps as well as Corps personnel--a role of the Corps which was to expand greatly.

B. The Progressive Era to the New Deal

At the turn of the century, the election of Theodore Roosevelt in 1901 heralded a new era in federal water resources planning and development. A number of federal study commissions on water resources were appointed and made reports, new federal planning agencies were created, the planning functions of the Corps were extended, and there were attempts at coordination and centralization of federal planning efforts. Ideas now found in the Water Resources Planning Act began to be articulated by the study commissions, as the federal effort grew in water resources planning and development.

The Department of Interior became heavily involved in water resources development with the passage of the Reclamation Act of 1902,[58] which established the Reclamation Fund with money derived from the sale of public lands in the western states. A few years later, in 1906, the Secretary of Interior was authorized to use the Fund to make examinations and surveys to locate and construct irrigation works in those states, including Texas.[59] The Secretary also was authorized to develop water power at Reclamation projects, when it was needed for irrigation, and to lease surplus power. He was authorized further to sell municipal water supplies to towns near irrigation projects.[60] By 1920, an Act empowered him to sell water "for other purposes than irrigation" where delivery of such water would not impair project service nor prior appropriation rights.[61] The concept of multi-purpose use of a reservoir was now firmly embedded in the Reclamation legislation.

At the turn of the century the Department of Agriculture also became involved in water resources planning and development. The Forest Reserves were transferred in 1905 from the Department of Interior to the Department of Agriculture, which inherited the power to issue permits for water power development. Chief Forester Gifford Pinchot began to limit permits to 50 years, a controversial policy which eventually prevailed with the passage of the Federal Water Power Act of 1920.[62] The Weeks law of 1911 set up the National Forest Reserve Commission and provided, among other things, that the Secretary of Agriculture in cooperation with the Geological Survey could recommend purchase of lands in the watersheds of navigable streams if such lands were needed to regulate water flow.[63]

Congress attempted to deal generally with non-federal water power development in the 1906 and 1910 General Dam Acts which prescribed conditions of general application for all non-federal power development on navigable waters to be subsequently authorized by Congress. Some of these conditions included the submission of plans by permit applicants to the Corps. The Chief of Engineers and the Secretary of War were authorized to approve applications on the basis of multiple uses.[64] Such multi-purpose use criteria later became embodied in the Federal Water Power Act of 1920.[65]

That Act, the culmination of Congressional battles on water power policy lasting over two decades, established a Federal Power Commission consisting of a Cabinet level committee of the Secretaries of War, Interior, and Agriculture. The Commission was empowered to issue licenses to non-federal developers of hydroelectric power on navigable streams and to make nationwide continuing investigations of water resources use, of water power potentialities, and of the water power industry in cooperation with other federal agencies and states.[66]

Investigations and surveys in other areas of water resources were becoming more comprehensive and multi-purpose. With the passage of the federal flood control legislation of 1917 all flood control examinations and surveys were required to include a comprehensive study of the watershed, the extent and character of the area to be affected by the proposed improvement, the probable effect on navigation, and the possible development of water power and such other uses as may be properly related to or coordinated with a project.[67]

Planning procedures also began to develop after the turn of the century, and that development has continued its evolution through the present day. Legislation in 1902 created a national level Board of Engineers for Rivers and Harbors[68] to review all reports on preliminary examinations, surveys, and projects and to make recommendations to the Chief of Engineers. One purpose of the legislation was to insure greater uniformity in recommendations and reports; another was to determine the economic and engineering justification of projects reported.[69] One salutary effect of the Board was that a number of unsound projects were culled and not sent to the Congress. General legislation in 1910 and 1913 expanded the factors that should be considered in preliminary examinations and surveys by the Corps.[70]

In 1925 a significant event took place for the development of the nation's water resources policies. In that year Congress directed the Corps of Engineers and the Federal Power Commission jointly to prepare and submit an estimate of the cost of making examinations and surveys of those navigable streams and their tributaries "whereon power development appears feasible and practicable." This was to be done with a view to formulating "general plans for the most effective improvement of such streams for the purposes of navigation and the prosecution of such improvements in combination with the most efficient development of the potential water power, the control of floods, and the needs of irrigation."[71] The list of streams selected was then submitted to the Congress in 1927 and printed in House Document No. 308,[72] from which the name "308 report" evolved. The 1927 River and Harbor Act authorized the prosecution of these surveys by the Corps.[73] In 1935 Congress directed that the surveys be supplemented by additional study or investigation.[74] By 1959 over 200 reports had been prepared; many have become the basis for the nation's present program of river basin development.[75] While these surveys frequently have been referred to as "comprehensive," they were concerned primarily with navigation improvements, much as the Federal Power Commission surveys were concerned with power development, although both types of surveys looked at other possible project uses.

A number of ideas and assumptions, now found in the Water Resources Planning Act, can be seen from the foregoing historical sketch.

First, water programs are viewed as having effects beyond the direct uses of water. Gallatin saw a navigation system as binding the nation together and helping to open the West. The Supreme Court in Gibbons v. Ogden viewed freedom of navigation as vital to an expanding interstate commerce. Senator William Windon, who headed a Select Committee on Transportation Routes to the Seaboard in 1874, saw navigation investments as ways of controlling the railroad monoply.[76] The Reclamation Act was seen as a major force in settling the West. Water power projects were believed to lead to increased industrial development.

Second, the river basin is becoming the important unit for planning and development. The Corps begins to make surveys of rivers and harbors in 1824. By the 1850's and 1860's it is surveying flooding problems in the lower Mississippi River basin. By the 1880's and 1890's the Mississippi River Commission, led by the Corps, is surveying the basin and preparing plans for both navigation and flood control. The California Debris Commission in 1893 begins to prepare plans for the Sacramento and San Joaquin river systems to prevent flooding and to protect navigation from hydraulic mining debris.* In 1920 the Federal Power Commission begins its comprehensive river basin surveys for water power, development, and seven years later, in 1927, the Corps begins its "308" surveys.

Third, the concept of comprehensive multi-purpose development--a concept closely tied to the hydrologic unit--is emerging. The Reclamation Act of 1902 is expanded so that, in addition to developing water for irrigation, the Secretary of Interior may develop water power and sell water for municipal and other purposes. The Federal Power Commission surveys and the Corps' "308" surveys are considering uses other than power and navigation. Permits issued by the Corps, and later licenses issued by the Federal Power Commission to private water power developers, are to be issued on the basis of criteria involving multi-purpose use and comprehensive development.

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* Here we have a commission regulating land use to protect a river system--an idea which has significance today in light of recent legislative proposals in Congress to give the Water Resources Council land use planning powers.77/

Projects licensed by the Federal Power Commission are to be:

> ". . . best adapted to a comprehensive scheme of improvement and utilization for the purposes of navigation, of waterpower development, and of other beneficial public uses."[78]

Coordination of federal water policies and programs, and coordination between the federal government and the states, however, is still minimal or non-existent, but the need for it has been seen and declared. The commission of engineers established by Congress in 1874 to report a plan for reclamation of the lower Mississippi Valley is highly critical of the uncoordinated and ineffective levee construction program.[79] And beginning in 1908 various commissions and committees established by the President or Congress to study water resources problems speak of the need for coordination of federal water activities and for cooperation between the federal government and the states. The commissions also stress the goal of comprehensive river basin and multiple use planning and development.

President Theodore Roosevelt, in establishing the Inland Waterways Commission on March 14, 1907, said in his letter to the members of that Commission:[80]

> ". . . Works designed to control our waterways have thus far usually been undertaken for a single purpose, such as the improvement of navigation, the development of power, the irrigation of arid lands, the protection of lowlands from floods, or to supply water for domestic and manufacturing purposes. While the rights of the people to these and similar uses of water must be respected, the time has come for merging local projects and uses of the

> inland waters in a comprehensive plan designed for the benefit of the entire country. Such a plan should consider and include all the uses to which streams may be put, and should bring together and coordinate the points of view of all users of water. The task involved in the full and orderly development and control of the river systems of the United States is a great one, but it is certainly not too great for us to approach. The results which it seems to promise are even greater."

When the Commission issued its report one of its recommendations was that

> ". . . hereafter plans for the improvement of navigation in inland waterways, or for any use of these waterways in connection with interstate commerce, shall take account of the purification of the waters, the development of power, the control of floods, the reclamation of lands by irrigation and drainage, and all other uses of the waters or benefits to be derived from their control."[81] (Emphasis added.)

The Commission recommended further that a National Waterways Commission be established

> ". . . to bring into coordination the Corps of Engineers of the Army, the Bureau of Soils, the Forest Service, the Bureau of Corporations, the Reclamation Service, and other branches of the public service insofar as their work relates to inland waterways,. . .[82]

The Commission's recommendations also set forth two other ideas found in the Water Resources Planning Act: first, that water planning be done ". . . through established agencies when such are available,. . ." and second, that such planning be done ". . . in cooperation with States, municipalities, communities, corporations, and individuals,. ."[83]

These basic ideas set forth by the Inland Waterways Commission--(1) comprehensive multi-purpose planning and development of river basins, and (2) coordination of federal policies and programs within the federal government and between the federal government and the states--were repeated by many federal study commissions and committees over the next fifty years.[84]

The National Waterways Commission, which the Inland Waterways Commission of 1909 had recommended to coordinate federal departments and agencies involved in water resources, was in fact established by Congress in 1917.[85] In this Act Congress authorized the Commission:

> ". . . to bring into coordination and cooperation the engineering, scientific, and constructive services, bureaus, boards and commissions of the several governmental departments of the United States and commissions created by Congress that relate to study, development, or control of waterways and water resources and subjects related thereto, . . ."[86]

But the members of the Commission were never appointed, due largely to World War I, and in 1920 the Federal Water Power Act[87] expressly repealed the Act establishing the Waterways Commission.

An attempt was made in 1932 by President Hoover, through executive orders, to transfer to the Department of Interior the non-military activities of the Chief of Engineers, U.S. Army, including rivers and harbors and flood control work, the activities of the Mississippi River Commission, the California Debris Commission, the Joint Board of Engineers for the St. Lawrence River Waterway, the Board of Engineers for Rivers and Harbors, and the Interoceanic Canal Board. But Congress disapproved, and the executive orders were repealed by the Act of March 3, 1933.[88/]

C. The New Deal

After the election of Franklin Roosevelt in 1932 and the advent of the New Deal, federal water planning and development activities increased, and there were various attempts by Congress and the Executive to coordinate them. Within the period 1933-1943 a successive series of national planning organizations--the National Planning Board (1933-1943), the National Resources Board (1934-1935), the National Resources Committee (1935-1939), and the National Resources Planning Board (1939-1943)--were established until Congress abolished the last of the four in 1943 with express instructions that its functions not be transferred to any other agency.[89/] These organizations were deeply involved in developing multi-purpose river basin plans and in studying basin problems and programs. In 1935, when the National Resources Board was reorganized as the National Resources Committee, its Water Resources Committee included representatives of the Department of Agriculture, the Corps of Engineers, the Bureau of Reclamation, the Geological Survey, the Federal Power Commission, the Tennessee Valley Authority, and the Public Health Service.[90/]

The Tennessee Valley Authority was created by Congress in 1933, marking for the first time a Congressional commitment to federal basin-wide development of a specific geographic area.[91] The 1936 Flood Control Act[92] inaugurated a national flood control program. Jurisdiction over implementation of the Act was split between the Corps and the Department of Agriculture. Flood control investigations and improvements were generally to be made by the Corps. But the Act assigned investigation of flood control and related land management in the watersheds to the Department of Agriculture. Beginning in 1938 various flood control acts directed the Corps to work with the Federal Power Commission in determining whether facilities suitable for development of power should be installed at projects. The 1939 Reclamation Projects Act authorized the Secretary of Interior to plan and construct projects for multiple purposes, in addition to irrigation.[93] That Act also provided that the Secretary of Interior must consult with the Chief of Engineers and the Secretary of War, and the views and comments of the Secretary of War were to be included in the report of the Secretary of Interior to the Congress. In addition, the Secretary of Interior was authorized to perform any of the necessary investigations and studies under a cooperative agreement with the Secretary of War.[94]

Thus the push for federal coordination was coming from two directions: from Congressional legislation in a fragmented way, and from the Executive Branch through the use of various interagency committees. By 1939, with the concurrence of the National Resources Planning Board, a "Tripartite Agreement" had been concluded between the Army Chief of Engineers, the Commissioner of Reclamation, and the Land-Use Coordinator of the Department of Agriculture.[95] The agreement provided for consultation between the parties in the preparation of river basin surveys.[96]

One other New Deal attempt to eliminate conflict and coordinate the activities of the special purpose agencies should be mentioned. In 1937, President Roosevelt recommended the creation of seven regional planning authorities for various parts of the United States. Various bills were introduced in the Congress, but legislation to implement the President's proposals was never enacted.[97]

D. The Federal Inter-Agency River Basin Committee (FIARBC)

Upon the dissolution of the National Resources Planning Board in 1943, the Tripartite Agreement gave way to a similar agreement between the Departments of Interior, Army, Agriculture, and the Federal Power Commission. The new agreement established the Federal Inter-Agency River Basin Committee (FIARBC). This Committee attempted to continue the coordination function that had been carried out by the National Resources Planning Board in the Executive Office of the President. The Department of Commerce became a party to the agreement in 1946, and the Federal Security Agency in 1950. The purpose of the agreement was to permit these agencies "to cooperate more completely in the preparation of reports on multiple-purpose projects and to correlate the results to the greatest practicable extent." The bulk of the work of FIARBC was discharged by sub-committees and regional committees.

The ability of FIARBC to achieve coordination between agency programs was limited in several ways. The Committee had no statutory standing and no budget. The authority, powers, and financial discretion of the constituent agencies remained with the agencies to be exercised individually by them. As a result, FIARBC's decisions were advisory only and their interpretation depended upon the voluntary cooperation and individual consent of its member agencies. Furthermore, member agencies' abilities to cooperate in effectuating a Committee decision with which it might agree was frequently limited by statutory provisions relating to the agencies' powers and duties.[98/]

With the vast increase in federal water resources activities following World War II, the need for comprehensive water resources planning became more compelling than before. In various statutes Congress continued to urge some kinds of coordination.[99/] At the same time, the Executive Branch continued its coordinating activities. FIARBC set up regional interagency committees for specific basins: the Missouri in 1945, the Columbia in 1946, the Pacific Southwest in 1948, and the Arkansas-White-Red and New York-New England basins in 1950. The Arkansas-White-Red and the New York-New England basin committees were chaired by the Corps of Engineers. All the regional committees included representatives of the affected states.

Generally, the committees were permitted to take action only on the basis of unanimous consent.[100]

One of the difficulties with the regional committees was that they were not able to reconcile separate agency plans and policies to the point of providing the integrated river basin plans that had been the aim of the National Resources Planning Board. Often the committees were brought into existence only after conflicting project proposals of the separate agencies were already in existence, as in the Missouri and Columbia basins, or after one agency had completed extensive planning in the basin, but before its rival agency had begun, as in the Arkansas-White-Red basin. Apart from the necessity that benefits exceed costs, the regional committees were given no overall societal goals which would be applicable to all participants.[101]

In the Missouri basin, the task of the interagency committee was limited by the Pick-Sloan compromise, under which projects in the basin were divided between the Corps and the Bureau of Reclamation and each agency did not criticize projects assigned by agreement to the other. In the Arkansas-White-Red basins, five years of interagency conflict on projects and policies prevented the Committee from achieving what it had originally intended, a comprehensive plan in sufficient detail to serve as a basis for authorizing projects.[102]

In 1950, a FIARBC subcommittee on benefits and costs submitted a report on "Proposed Practices for Economic Analysis of River Basin Projects," which became known as the "Green Book." Although the Green Book was approved by the various member agencies of FIARBC, it was not binding on any of them. The Bureau of Reclamation refused to accept restrictions on the use of secondary benefits, and other agencies accepted certain parts and rejected others.[103/]

By 1954 not only were the Corps of Engineers and the Bureau of Reclamation active in river basin planning and project development, but the Department of Agriculture also had major responsibilities in these areas. In that year, Public Law 566 inaugurated the small watershed program. After that time the Soil Conservation Service of the Department of Agriculture was responsible for three separate water resources construction programs: (1) eleven watersheds authorized for treatment in Section 11 of the Flood Control Act of 1944; (2) sixty-two "private" watershed projects authorized by Congress in 1953; and (3) Public Law 566 projects.[104/]

The various bureaus and agencies of the federal government by now were frequently in conflict with one another over various purposes to be served by them in their various statutes, and only occasionally were they given instructions by Congress to coordinate their operations witn other agencies.[105/]

E. The Interagency Committee on Water Resources (ICWR)

In May of 1954, FIARBC was reconstituted as the Interagency Committee on Water Resources (ICWR). The Committee was to have members of sub-cabinet rank and to include the new Department of Health, Education and Welfare. The Departments of Commerce and Labor agreed to participate with associate member status. ICWR rechartered FIARBC's regional and technical subcommittees. However, it did not undertake discussion of major policy questions pending possible submission of proposals for water policy legislation by the newly established cabinet level "Presidential Advisory Committee on Water Resources Policy" (PACWRP), composed of the Secretaries of Agriculture, Defense, and Interior.[106]

F. Congressionally Directed River Basin Surveys in the 1950's

In 1958, Congress passed two virtually identical statutes establishing two United States Study Commissions. One study commission, the Texas Basin Study Commission, was instructed to draw up comprehensive river basin plans for the basins of eight Texas rivers. The other study commission, the Southeast Basin Study Commission, was to develop comprehensive plans for five rivers in the southeast. These plans were not to include final project designs and estimates, but only to provide a framework for more detailed future plans. The authority of each commission was to terminate after submission of its final report to the President. These study commissions were organized somewhat differently from the interagency coordinating committees under ICWR. Both of the commissions were Presidentially appointed. The Chairman was to be an independent non-government person who was resident in the locality. Membership was divided between federal and state representatives. Each study commission had its own independent budget and staff.[107]

Earlier, in 1956, following extensive hurricane flood damage, the Corps of Engineers was directed by resolutions of the Senate Public Works Committee to undertake a more detailed comprehensive survey of the Delaware River Basin. Congress gave complete responsibility for preparation of the plan to the Corps, but at the beginning of the investigation the Corps invited the participation of other federal agencies and levels of government. The survey was done by a Delaware River Basin Survey Coordinating Committee. In addition to the Corps, the Public Health Service, the Office of Business Economics of the Department of Commerce, and several research and planning agencies of both the Department of Interior and Agriculture, and also the Federal Power Commission, participated. Agencies from the states of Delaware, New Jersey, New York, and Pennsylvania, and the cities of New York and Philadelphia, and from the Interstate Commission on the Delaware River Basin also participated in the survey. The composition of the Committee was very close to what was to be the composition of the river basin commissions established under Title II of the Water Resources Planning Act.[108]

G. Recommendations of Commissions and Committees (1947-1956)

Studies of the first Hoover Commission in 1947 and 1948 suggested that better coordination could be achieved through consolidation of water resources agencies in one department. That Commission also recommended the creation of a Board of Impartial Analysis for Engineering and Architectural Projects which would review and report to the President and the Congress on the public and economic value of project proposals.[109/]

The President's Water Resources Policy Commission (Cooke Commission) was established on January 3, 1950. That Commission recommended:

> To ensure the preparation of sound basin programs, Congress should direct the responsible Federal agencies to cooperate with each other and with the appropriate state agencies in the necessary surveys and plans. Such action requires some definite coordination of the efforts of Federal and State agencies...Congress should set up a separate river basin commission for each of the major basins [which] ...should be authorized to coordinate the surveys, construction activities, and operations of the Federal agencies in the several basins, under the guidance of independent chairmen appointed by the President and with the participation of States agencies in the planning process.[110/]

On August 20, 1951, the House Committee on Public Works resolved that its chairman appoint a special subcommittee to study the policies, practices, and procedures in connection with the authorization and construction of river-and-harbor and flood-control projects. This subcommittee under the chairmanship of the Honorable

Robert B. Jones, Jr., felt that the problems in the field of water resources could not be solved by simple reorganization or by the establishment of a board of review. It believed that conflicts among the agencies should be eliminated and greater coordination affected. The subcommittee stated:

> "Your subcommittee is convinced that, for the maximum economic return from Federal water resource development, a single integrated plan must be developed and provided for each stream. It is of the opinion that the processing of unintegrated segments through different committees and the ultimate enactment of conflicting projects can lead only to waste and a chaotic situation. It believes that no segment of a plan should be approved by any committee or enacted by Congress so long as major conflicts exist between such segment and the parts properly under jurisdiction of some other element of the executive branch. The insistence of Congress upon coordination through its refusal to authorize conflicting elements would probably bring about the necessary coordination more quickly than any amount of reorganization. The agencies of the executive branch must be shown that they cannot attain their conflicting ends by playing one committee of Congress against the other."[111]

President Eisenhower's Advisory Committee on Water Resources Policy (PACWRP) issued its report on December 22, 1955.[112] It made a number of recommendations, five of which contained ideas now found in some form in the Water Resources Planning Act. It recommended first that water resources planning be done cooperatively by representatives of federal, state, and local agencies; second, that a federal Coordinator of Water Resources be established to provide Presidential direction to agency coordination and to establish principles, standards, and procedures for planning and development of projects; third, that an independent Board of Review be created to analyze the engineering and economic feasibility of projects and report to the President through the Coordinator; fourth, that regional or river basin water resources committees be formed with a permanent non-voting chairman appointed by the President and with membership composed of representatives of all federal departments and states involved; fifth, that a permanent Federal Inter-Agency Committee on Water Resources, advisory in character, be established under the chairmanship of the Coordinator and be composed of principal policymaking officials of the agencies concerned.[113]

Some of the other conclusions of the PACWRP report are worth noting. With regard to coordination the report said:

> "The greatest single weakness in the Federal Government's activities in the field of water resources development is the lack of cooperation and coordination of the Federal agencies with each other and with the States and local interests. This has been occasioned by the fact that the Federal interest in water resources development has been expressed in different laws empowering different agencies to pursue particular programs for different purposes. There has been inadequate coordination of the program of one agency with that of another and inadequate consultation with and consideration of the interests of the States, local communities, and individuals most vitally affected."[114]

While the Committee believed that the river basin was generally an appropriate unit for planning, it emphasized that "...it is possible to place too much emphasis upon the conception....[I]n some instances river basin development should be viewed from the standpoint of a region."[115]

The Commission also questioned the usefulness of consolidating all water resources agencies into a single federal agency.

> "...[C]onsolidation in and of itself could not effectively solve many of the more important problems. It is first necessary that conflicting policies...be resolved. Even if a single Federal agency should be made responsible for all Federal water-resources development today, that agency could not effectively operate until conflicts in laws had been removed and consistent Federal policies developed."[116]

H. Recommendations of the Senate Select Committee on Water Resources

It is out of this background that Senate Resolution 48 of the 86th Congress was introduced. Pursuant to that resolution, on April 20, 1959, a Senate Select Committee on Water Resources was established. In introducing the resolution, Senator Mansfield called attention to the increasing rate of water use in the United States, and he suggested that water policies and programs were insufficient to meet this projected demand. He referred to a number of reports dealing with the national water resources policy, and he noted that none had become the basis for Congressional action.[117]

The Committee made five general recommendations. First, it called for the federal government in cooperation with the states to prepare plans for comprehensive water development and management for all major river basins of the United States. It urged that such plans should take into account prospective demands for all purposes served to water developments. It asked the Executive Branch to submit plans to the Congress in January 1962 for undertaking and completing such studies in all basins by 1970. It also urged that the plans be brought up-to-date periodically. Finally, it stated that reports and individual projects submitted to the Congress for authorization should specify how the project would fit into the comprehensive long-range program and should specify the range of alternative purposes that might be served by the resources needed for the recommended projects.[118]

Second, the Committee recommended that the federal government stimulate more active participation by the states in planning and undertaking water development and management activities. This goal was to be accomplished by having the federal government establish a 10-year program of grants to the states for water resources planning, with a minimum of 5 million dollars in federal funds to be made available annually for matching by the states for use in the preparation of long-range comprehensive plans.[119]

A third recommendation was that a periodic assessment of water supply-demand relationships be made biennially for each of the water resource regions of the United States.[120]

Fourth, the Committee recommended a federal program of coordinated scientific research on water; and fifth, it recommended a series of steps to encourage efficiency in water development and use.[121]

The Committee recognized the need to strengthen state and local participation in water resource planning in order to eliminate the situation where the federal agencies took the initiative and the state and local governments were in the position of having to approve or disapprove federal plans.[122/] It recognized the need to modify federal budget procedures so that there would be a recognition of the biennial nature of many of the state legislatures; it argued for provisions for financing of construction projects on a continuing basis so that federal and state activities and programs could be coordinated.[123/]

Finally, the Select Committee considered federal reorganization and consolidation of the federal water resources agencies. While the Committee favored fewer federal agencies operating in the water resources field, it had doubts about the efficacy of a new consolidated water agency.[124/]

I. Legislative History of the Water Resources Planning Act

The legislative history of the Water Resources Planning Act has been thoroughly discussed in the "History of the Implementation of the Recommendations of the Senate Select Committee on National Water Resources."[125/] However, some mention of that history and the issues which developed during the course of it should be helpful to an understanding of the Water Resources Council and the general problem of coordinating federal and state water policies and programs.

On January 29, 1959, two years prior to the issuance of the Report of the Senate Select Committee, Congressman Wayne Aspinall, Chairman of the Committee on Interior and Insular Affairs of the House of Representatives, had introduced a bill to provide general authority for establishing river basin commissions for water resources planning. His bill was the earliest predecessor of the legislation which eventually became Title II of the Water Resources Planning Act. Under the Aspinall Bill the river basin commissions differed from those proposed by President Eisenhower's Advisory Committee in that all the members were to be appointed by the President. The bill also introduced a concept of membership on the river basin commission from any legally created interstate compact commission having jurisdiction over any of the waters in the basin. The Aspinall Bill called for uniform methods to be followed by all federal agencies in evaluating and allocating the costs of water resources projects.[126/]

Hearings were not held on the bill. It was reintroduced on January 9, 1961--three weeks before the Senate Select Committee's Report--as H.R. 2202 of the 87th Congress, first session.

Subsequently, in January of 1961, the Eisenhower Administration transmitted legislation to the Congress to establish Presidentially appointed water resources planning commissions in river basins. This legislation was endorsed by President Dwight D. Eisenhower in his last budget message to Congress on January 16, 1961.[127/]

When President Kennedy took office on January 20, 1961, he sought new means to coordinate federal resource programs. Three weeks after the Select Committee's report was filed, he sent to Congress a message on natural resources in which he adopted and expanded the recommendations of the Select Committee. The President's message of February 23, 1961, urged ". . . the Congress to authorize the establishment of planning commissions for all major river basins where adequate coordinated plans are not already in existence."[128/]

The President's message did not propose any steps to implement the second recommendation of the Select Committee, which was to have the federal government stimulate more active participation by the states in planning and in undertaking water development and management activities by setting up a 10-year program of grants to states. Many members of the Select Committee considered this grant-in-aid program to be the key to the effective improvement of water resource policies. Senator Anderson therefore introduced a bill in the Senate with 15 other sponsors as S. 1629 of the 87th Congress, a bill "to provide financial assistance to the States for comprehensive water resources planning." The bill had the short title of "Water Resources Planning Act of 1961." A companion bill was introduced in the House of Representatives.[129/]

The program of grants to states under the Anderson Bill would have been administered by the Department of Interior. On May 3, 1961, Senator Kerr, not satisfied with placing the program under the Department of Interior, introduced a bill, S. 1778 of the 87th Congress, which proposed the establishment of a Water Resources Planning Board consisting of representatives of federal departments and agencies determined by the President. The Board would have been authorized to assist the states in comprehensive water resources planning by distribution of grants under a formula similar to that contained in the Anderson Bill.[130]

Senator Anderson then held hearings on his bill, S. 1629. A number of state witnesses testified in favor of the proposal.

Finally, on July 13, 1961, President Kennedy forwarded his recommendations for legislation to implement the report of the Senate Select Committee. The Administration bill was introduced in the Senate by Senator Anderson and 15 co-sponsors on July 14, 1961, as S. 2246 of the 87th Congress.[131]

The bill was introduced in slightly different form as H.R. 8155 and 8177 in the House of Representatives. It was designed to implement three of the recommendations of the Select Committee: those dealing with river basin plans, grants to states, and a periodic assessment of water demand-supply relationships. Although there were numerous changes in the bill until its final enactment in July of 1965 as the Water Resources Planning Act, the general format of the bill remained the same.

The President's bill incorporated the idea of Senator Kerr's proposed Water Resources Planning Board but changed the name to the "Water Resources Council;" it increased the powers of the body to include general policy formulation for the entire federal water resources program, a review of river basin plans, and administration of a grant-in-aid program to the states. Title II of the bill provided for the establishment of Presidentially appointed federal river basin commissions for water resources planning. Title III, taken from Senator Anderson's bill, authorized financial assistance to the states for comprehensive water resources planning.[132/]

Joint hearings of the Senate Committees on Interior and Insular Affairs and Public Works were convened to consider the Administration's proposed Water Resources Planning Act of 1961. There were a number of administration witnesses who testified in support of the measure. Many questions were asked concerning such matters as the relationship of the policy formulation role of the Council to the Bureau of the Budget, procedures to be followed in setting up river basin commissions, and the effect of the bill on state water rights--issues which were to recur throughout the next four years while the bill was being debated. It became apparent in the hearings, largely due to the representations made by the Interstate Conference on Water Problems of the Council of State Governments, that the states were particularly concerned that federal jurisdiction over state water resources would be increased under the legislation as it had been introduced. The Senate Committee took no further action during the first session of the 87th Congress, but put its staff to work with the Council and the federal departments to develop language more amenable to agreement by the states. A number of changes were suggested by the states.[133/]

Later, hearings in 1962 on S. 2246 disclosed that not only were the states worried about a loss of jurisdiction, but a number of the federal agencies, particularly the Department of Justice, felt that the federal departments would surrender their prerogatives in the water field under the changes suggested by the Interstate Conference on Water Problems of the Council of State Governments. During the remainder of the second session of the 87th Congress a series of conferences were held between representatives of the state governments and the Senate Committee staff in order to reach an agreement on a draft bill. By the beginning of 1963 it appeared that some kind of an accommodation could be worked out between the states and the federal agencies. On March 15, 1963, Senator Anderson and co-sponsors introduced the Water Resources Planning Act of 1963 as S. 1111 of the 88th Congress, 1st session.[134/]

Few changes were made in Title I and III of the President's original bill. There had been little or no opposition to the establishment of the council of cabinet officers nor to the authorization of financial aid to the states. However, much opposition had been directed to Title II of the 1961 bill, particularly at the nature and mechanics of establishing the river basin commissions.

Whereas President Eisenhower and President Kennedy had proposed that the commissions should be established and appointed by the President when one or more states in the river basin requested the establishment of such a commission, it was the states' contention that two-thirds of the states involved should take part in any such request before a commission should be set up. The states also objected to the earlier version of the bill in which the states' representatives on the river basin commissions would be appointed by the President, because that would make them federal employees, responsible to the President rather than to the states from which they came. It would also make the commission a federal agency. Furthermore, the states sought language which would recognize their primary interest in water resources as opposed to the interest of the federal government. This issue, the water rights question, was finessed in the new bill by provisions which safeguarded the status quo of the water rights question. One provision said that nothing in the act should be construed as either expanding or diminishing either federal or state jurisdiction, responsibilities, or rights with respect to water. A second provision recognized that in many instances, where necessary agreement could not be reached on the establishment of a river basin planning commission under the provisions of the act, the federal government might procede itself to plan for a basin by any of the conventional presently authorized methods.[135/]

With regard to the creation of the river basin commissions,

S. 1111 provided that river basin commission might be established by the President when the Federal Water Resources Council and one-half of the states involved agreed to it. The President was to appoint the chairman. Each head of a federal department or agency involved would appoint his representative. And each state would appoint its own representative.[136]

The revised bill also contained provisions intended to assure that neither federal nor states' rights would be overridden in the planning process. The bill did this by providing that there should be only two votes in each commission. The chairman, appointed by the President, would cast one vote for the federal agencies. The vice chairman, elected by the state representatives, would cast one vote at the instruction of the states. This did not eliminate the possibility of a stalemate, but it assured that when differences arose alternatives would be submitted in the commission's final report. Thus S. 1111, for the first time, made the river basin commissions independent entities, neither federal nor state. The commissions were to be similar to interstate compact commissions in this respect.[137]

The federal agencies suggested a number of amendments to S. 1111. One amendment suggested by the Department of Interior added a proviso to Section 201(b)(2) so that a river basin commission, in addition to preparing and keeping up-to-date a comprehensive coordinated joint plan, would also have to ensure that the plans would include an evaluation of all reasonable alternative means of achieving optimum development of water and related land resources of the basin, and further, that the plan might be prepared in stages including recommendations with respect to individual projects.[138]

The amendment recognized that planning is a continuing and imperfect process, but that valid recommendations should not be held up because of possible further refinements. Second, the amendment acknowledged that in case consensus could not be reached in one set of recommendations, alternatives could be set forth so that policy judgments could be made by Congress and state legislatures on issues which the commission could not resolve. Finally, the proviso established the policy that a commission could perform its work in appropriate segments and could submit recommendations with respect to individual projects without waiting until the complete plan was formulated.

In addition, both the Bureau of the Budget and the Department of Interior recommended an amendment to authorize termination of a river basin commission either by the Council or by a majority of the states on the commission. S. 1111 as introduced had required concurrence by both the Council and a majority of the states as a condition of termination. The amendment reinforced the concept that the commissions were to be voluntary arrangements.[139]

Finally the federal agencies suggested changes in the voting provisions. Instead of the federal chairman casting one vote for the federal agencies and the vice chairman casting one vote for the states--termed a "double veto provision" by the Department of Interior--it was proposed that the commissions act by "consensus." If consensus could not be achieved, there would be full opportunity for each member of the commission to present and record his views.[140/]

In the previous Administration bill, S. 2246, the Council would have been empowered to make modifications in river basin plans. S. 1111 limited the Council to reviewing the plan and recommending changes. Some of the federal agencies attempted to reinstate the older provision so that the Council would have more authority. In the final legislation the Council was given power to revise plans for federal projects intended to be proposed in any plan or revision thereof being prepared by a river basin planning commission.[141/]

The Senate Committee reported S. 1111 with amendments on November 26, 1963. The bill became the pending business of the Senate on December 3, 1963. Senator Anderson explained the provisions of the bill in detail on the floor of the Senate. He noted the importance of the biennial assessment of water supply and demand in the various regions of the nation. He stated that a second major function of the Council would be to assess the effect that individual river basin plans would have on other regions of the nation. The third major task would be to keep current the statement of federal principles, standards, and policies for water agencies in justifying and planning water projects which had previously been worked out on an ad hoc basis by four cabinet members to replace Budget Circular A-47.[142/]

Senator Anderson explained the novel arrangement that had been worked out on the river basin commissions to permit federal and state interests to meet as representatives of autonomous units of government. He described the consensus provision.

During the debate there was a discussion as to how the funds were to be divided among the states, the relationship of river basin commissions to states that might not want to be members, state obligations for financing the commissions, and the effect on interstate compacts.

There was some discussion of the term coordination and at least two meanings were ascribed to that term. One was that the commissions would ensure that larger plans properly accommodated local plans and that the commission plans would not control local and state plans. Another meaning of the term was that the commission plans should be coordinated with other plans for water developments, plans for water pollution control projects, plans for flood control projects, and all other plans the government has to avoid duplication and overlap. As Senator Anderson explained, "we do not wish to have one agency going in one direction and another agency going in another direction, with no regard for each other." The bill passed the Senate and was sent to the House of Representatives. Hearings were held but the bill remained unfinished business and died at the adjournment of the 88th Congress.[143/]

In the 89th Congress the bill was reintroduced in the Senate on January 6, 1965, as S. 21. The companion bill was introduced in the House as H.R. 1111. With slight amendments the bill passed the Senate on March 1, 1965.[144]

The House held a one-day hearing. It added some amendments, most of which were technical in nature but one of which emphasized the importance of involving all segments of the American economy, including in the planning process not only federal, state, and local agencies, but also private enterprise and other non-federal entities. This language became incorporated in Section 2 of the final act.[145] It was pointed out in the House debate that already established river basin commissions such as the Mississippi River Basin Commission would not be affected by the legislation nor would interstate compacts presently in existence.[146]

One other comment during the debate by Congressman Hosmer of California is important for our purposes. He expressed the fear that the Council, " - being composed of the Secretary of the Army, the Secretary of the Department of the Interior, the Chairman of the Federal Power Commission, and the Secretary of HEW - might deteriorate into one of these outfits where someone down about six levels below on the steps of the ladder actually performs the functions and duties of the Council."[147] Although Congressman Hosmer was satisfied that this would not take place, in fact his fears proved to be well founded.

After the debate, S. 21 as amended was passed by the House.[148] On April 9, 1965, the Senate disagreed to the House amendment of S. 21 and asked for a conference. The conferees basically agreed to the language of the House amendment to S. 21 except in the following particulars. First, section 3(d) was added to the Act which prohibited the studies of interbasin transfers by the river basin commissions or by entities performing the functions of the river basin commissions. Second, the House agreed to the Senate version of S. 21 in which the jurisdiction and powers of the permanent Engineering Board and the U.S. operating entity or entities established pursuant to the Columbia River Basin Treaty would not be affected by the Act. There were also some other minor changes.

The Act then passed both houses with these amendments and was approved by the President on July 22, 1965 (Public Law 89-80, 79 Stat. 244-254).[149]

IV. THE WATER RESOURCES COUNCIL

A. Formal Organization and Structure

1. Membership and Decisionmaking Structure

The formal organization and structure of the Council is set forth in its regulations.[150] The Secretaries of Interior, Army, Agriculture, Transportation, and Health, Education and Welfare, and the Chairman of the Federal Power Commission,[151] sitting as the Council of Members, are to meet regularly at least four times a year either upon the call of the Presidentially appointed Chairman, who has been traditionally the Secretary of Interior,[152] or upon the request of a majority of members.[153] As a matter of practice, the Council itself has met less frequently. During a recent two-year period it met three times.[154] Only in the early days of the Council's existence have most of the members attended members' meetings. Typically, the meetings are attended by the Secretary of Interior, the Chairman of the Federal Power Commission, and various "designees"[155] of the other members, usually assistant secretaries or persons of similar status.

The Council of Members decides issues by majority vote, except that decisions affecting the authority or responsibility of a member can be made only with his concurrence.[156]

The bulk of the work of the Council has been carried out through a number of groups other than the Council of Members itself: (1) representatives of the members, which comprise a "Council of Representatives" known unofficially as the COR; (2) the staff, (3) technical, advisory, and field committees; and (4) task forces.

The COR is a body consisting of the Director and one or more representatives of each member. It is to be distinguished from the Council of Members which often meets through a body of designees with perhaps a few members personally present. The designees are different individuals from those persons who act as representatives of the members in the COR. The essential difference is that the COR is composed of men who hold high civil service positions in the various water bureaus of the departments. The "designees" are usually of assistant secretary or equivalent status.

Under present regulations the COR is to meet at least once a month, but more often if necessary.[157/] Although up to four individuals may be authorized to act as representatives of a member, only one representative may vote for the member when a decision is to be made by the COR.[158/] As a matter of practice it is the COR that thrashes out issues and makes the bulk of the decisions for the members.

Certain decisions, however, are reserved solely for the members: actions requiring Presidential action or approval, decisions involving substantial policy issues, submission to the President of nominations for chairmen of river basin commissions, approval of annual budget requests and the annual operating program, delegations of authority, issuance of invitations to become associate members or observers, appointment and termination of the appointment of executive officers and the associate director, and approval of rules and regulations.[159/] Even with respect to these matters (with the exception of appointment and tenure of executive officers), the COR is directed by Council regulations to consider the issues prior to their consideration by members, to formulate proposals and recommendations, and then to present them, together with minority views, if any, to the members.[160/]

The Council's regulations provide further that issues and items are placed on an agenda for COR consideration by the Director after consultation with the representatives. The Director must include on the COR agenda any matter proposed by any representative. Items not considered at one meeting take precedence over other matters to be considered at the next regular COR meeting.[161/] If unanimity of the representatives and the Director is not achieved, the Director must bring the matter to the members for their consideration at their next meeting.[162/] In addition, whether or not there is unanimity, any representative or the Director, upon a declaration that an issue involves "substantial policy," may have the matter referred to the members for their decision.[163/]

These last two provisions are designed in part to keep an issue from being buried by the COR and to allow the Director to force an issue to the level of the Council of Members. When these provisions were proposed, they were at first resisted strongly by many of the representatives of the constituent departments. One reason given is that the representatives did not want a strong Director and staff to be able to impartially analyze and force issues to a cabinet-level decision by the members.[164/]

Associate Members of the Council--presently the Secretary of Commerce, the Secretary of Housing and Urban Development, and the Administrator of the Environmental Protection Agency--may participate, pursuant to Council regulations, "in consideration of all matters relating to their responsibility, except that their concurrence in a decision of the Council is not required."[165] As a practical matter the Associate Members are treated as if they were full members when matters are being discussed. They participate fully in Council deliberations and their representatives participate fully in COR discussions, but they may not vote.

Observers may participate in the discussions of matters of interest to them. Their representation at COR and Council meetings tends to be less regular than that of Members and Associate Members. Observers presently include the Attorney General, the Chairman of the Council on Environmental Quality, the Director of the Office of Management and Budget, and the Chairmen of the seven river basin commissions.

In addition to full Members, Associate Members, and Observers, the Chairman may invite the heads of other federal agencies "to participate with the Council when matters affecting their responsibilities are considered by the Council."[166] When decisions of the Council affect the authority and responsibility of any non-member agency within the meaning of section 3(b) of the Act,[167] the Council is to request that agency "to take concurrent action along the basis of the Council recommendation."[168]

2. The Staff, Committees, and Task Forces

The Staff officers of the Council now include a Director, a Deputy Director, an Associate Director, two Assistant Directors, a

General Counsel, and an Administrative Officer.[169] The total professional staff now numbers about 15 persons. There have been changes in the staff organization under the present Director, W. Don Maughan, who in 1970 succeeded Henry Caulfield, who had been the Director since the Council's inception. The changes are reflected in the new rules and regulations which were issued July 29, 1970.[170]

The functions of the Staff as set forth in the Council's regulations generally follow the statutory duties given to the Council by the Water Resources Planning Act.

The Director is primarily responsible for running the activities of the Council and directing the staff. Acting for the Chairman, the Director also represents the Council in its relation with Congress, the states, federal agencies, and the general public.

The Deputy Director acts for the Director in his absence. He has primary responsibilities over Council participation in interstate and federal-interstate compact negotiations, international matters, and the creation, operation, and termination of river basin commissions. The old regulations[171] did not specifically set forth these responsibilities.

The rest of the staff is organized around three basic ideas: (1) policy development, (2) federal-state programs, and (3) special projects and research.

The Associate Director heads the Office of Advanced Projects and Research. The position is an outgrowth of the position of

Research Advisor which existed under the directorship of Henry Caulfield. With other federal, state, and local agencies, the Associate Director is supposed to work on difficult conceptual and technical problems. He is also in charge of relations of the Council with the research community.[172] The main activity of the Associate Director in the past two years has been the development of new principles, standards, and procedures for the evaluation of water and related land resources projects. The office has a professional staff of two persons.

One of the two Assistant Directors heads a Policy Development Division. His duties are to study the adequacy of present administrative and statutory means of coordination of water policies and programs of the federal agencies; appraise the adequacy of the federal agencies' policies and programs and their relation to the programs of states, local governments, and private enterprise; develop solutions for assigned policy problems especially regarding principles, standards, and procedures for federal participation in regional or river basin assessments, plans and programs, and in project formulation and evaluation; make recommendations with respect to federal policies and programs; and serve as Chairman of the Policy Development Committee.[173] The Committee consists of individuals designated by the members of the Council who are to work on those tasks for which the Policy Development Division has responsibilities.[174] Associate Members and Observers may be represented.

Since July 1970 the policy-making apparatus of the Council has changed significantly. Prior to that time the Director for Policy had no professional staff. He also was the Legal Advisor to the Council, thus having the staff responsibilities for legal and policy issues. Since that time the policy and legal functions have been separated. There is now a General Counsel and an Assistant Director for Policy. The Assistant Director for Policy now has a professional staff of five persons and it is anticipated that this professional staff will grow larger. One of the difficulties the Council had in the past in carrying out its policy-making responsibilities was due in part to lack of an adequate policy staff.

By October 1970 the Policy Development Committee had identified four primary areas of activity to which it wanted to address itself during the forthcoming year. First, it wanted to coordinate existing policy and administrative measures in the following sectors: flood plain management (including such things as developing a unified national flood program, cost-sharing for flood protection, model statutes and ordinances for flood plain regulation by states, and implementing Executive Order 11296 which called upon the federal agencies to consider the flood hazard in their various programs and activities); cost-sharing generally; a review of the OBERS system of economic projections; identification and correlation of a number of national program plans such as transportation, recreation, wild rivers, and water quality; development and coordination of a PPB system for water agencies; and recreation and fish and wildlife.

The second area of activity involved implementing procedures, guidelines, and handbooks in such areas as planning, priority reports from river basin commissions, the impact of OMB Circular A-95 (which called for intergovernmental coordination of federal assistance programs and projects) on water resource programs, a review and updating of the coordination handbook, and the issuance of guidelines for the use of the OBERS system.

The third area of planned activity involved development and review of new policies for benefit sharing, streamflow regulation, land use, and the relationship of population dispersion and water resource development.

Finally, the fourth area of activity was to be a follow-up on the "principles and standards" which had been developed by the Special Task Force of the Water Resources Council. The follow-up involved such matters as development of an adequate data base; review of agency implementing instructions; defining the national interest in regional development and quality of life accounts; benefit and cost measurement methodology; cost allocation refinements; cost-sharing in such areas as environmental quality, quality of life, and regional development; guidelines for economic evaluation of water resource developments and plan formulation.

A year later it appeared that this program was a bit too ambitious for the short run, although it provided a useful check list. The 1972 work program of the Policy Development Committee concentrated on fewer and more specific items: consolidated grants; cost-sharing for all purposes; flood plain management; the development of guidelines to implement the July 1970 policy statement concerning "Water and Related Land Resources Planning;" commenting on National Water Commission reports; review of existing pricing policies and their use; and the implementation of the proposed principles and standards, and the issuance of guidelines in the development of procedures.

The other Assistant Director is the head of the Federal-State Programs Division. His duties are many and detailed, but generally speaking he is responsible for preparation of the national assessment, for federal participation in river basin planning, for field organization activities in river basin planning, for review of basin plans, and for administration of the program of grants to the states under Title III of the Act. He is also Chairman of the Federal-States Programs Committee and the State Grants Committee.[175]

The Federal-State Programs Committee consists of designees of the Members. Associate Members and Observers may be represented. In general, the Committee helps the Council carry out the national assessment, it prepares and coordinates budgets, it reviews the river basin planning programs and reports, and it tries "to build up coordination between states and federal agency planning."[176] The State-Grants Committee also is comprised of designees of the

Members; again Associate Members and Observers may be represented. Unlike the Policy Development Committee and the Federal-State Programs Committee, however, federal agencies administering grants to states for water and related land resources planning, when they are not otherwise represented, may be represented in the Committee. All three Committees terminate as of July 1, 1972, and may be reappointed thereafter for two-year terms.

In addition to the three aforementioned administrative committees, there are four technical committees: (a) Economics, (b) Hydrology, (c) Sedimentation, and (d) Vector Control.[177/] Advisory committees may also be established. They are of two types: (a) ad hoc and (b) standing.[178/] There presently exists a Standing State Advisory Committee consisting of various water officials from the states. The establishment of a National Programs and Assessment Committee was under consideration at the COR meeting of January 12, 1972.[179/]

Field organizations operating under the Council include four field committees formerly under the Inter-Agency Committee on Water Resources. They are as follows: (1) Missouri Basin Inter-Agency Committee; (2) Pacific Southwest Inter-Agency Committee; (3) Arkansas-White-Red Inter-Agency Committee; and (4) Southeast Basins Inter-Agency Committees.[180/] Field organizations also include the offices of the Chairmen of the Federal-State River Basins Commissions established under the Water Resources Planning Act.[181/]

B. Establishing the Council Mechanism

Henry Caulfield was the first Director of the Council. An economist, he had worked on the staff of Secretary of Interior Stewart Udall as the Director of the Resources Program Staff before being named as Council Director. He had also worked on the legislation that became the Water Resources Planning Act.[182/]

Shortly after President Kennedy submitted to Congress the administration version of the Water Resources Planning Act, the President requested the Secretaries of the Army, Interior, Agriculture, and Health, Education and Welfare (the President's ad hoc Water Resources Council) to review existing water resources development standards and make recommendations to him.[183/] The four Secretaries established an Interdepartmental Staff Committee and Caulfield was named the representative of the Department of Interior and Chairman of the Committee. The Committee produced a statement of "Policies, Standards and Procedures in the Formulation, Evaluation, and Review of Plans For Use and Development of Water and Related Land Resources." The statement was then forwarded to the President by the President's Water Resources Council. It was published as a Senate Document, given the number "97" and thereafter was commonly known as "Senate Document 97."[184/]

President Kennedy approved the statement for application by the Bureau of the Budget and the four Departments. In his letter of approval he urged his Water Resources Council to work on "up-to-date policies, standards, and procedures relating to cost allocation, reimbursement, and cost sharing, and. . . other water and related land resource subjects of mutual concern to [the] . . . four Departments upon which uniformity and consistency would be in the public interest." The letter ended by stating, "Consideration of subjects such as these and establishment, with my approval, of necessary policies, standards, and procedures will be the responsibility of the Water Resources Council when it is created."[185/]

The Interdepartmental Staff Committee continued to work on these and other problems. When the Water Resources Planning Act was enacted on July 22, 1965, the basic structure of the organization which the Council was to adopt was already in existence: the President's Water Resources Council, with the addition of the Federal Power Commission, became the statutory Council, and the Interdepartmental Staff Committee became the COR.[186/] The evolution was a natural one; the new structure was familiar to both the representatives and the Council members. One should note, however, that this structure is not the only way the Council might have been organized. For example, the Council might have relied solely on a staff to do its work and might never have established a COR.

The first year of the Council's existence was spent largely in working out ground rules and hiring staff. One of the first orders of business was the development and publication of the Council's rules and regulations. These were published in the Federal Register on November 18, 1966,[187] but they only covered Council organization and planning grants to the states. Rules and regulations relating to river basin commissions were deferred until such commissions had been established and there had been some experience with them. Proposed rules and regulations for river basin commissions were published in the Federal Register on April 13, 1967 (32 F.R. 5939-5944), but they were never published in final form.

The professional staff that was hired represented the interests of the various federal water agencies and the states. The Director, Caulfield, came from the Department of Interior. By virtue of his position as Director, his prior chairmanship of the Interdepartmental Staff Committee, his knowledge of the interests of the various federal water agencies, and his close personal relationship with an influential Cabinet officer, Stewart Udall, Secretary of Interior and Chairman of the Council, Caulfield was a formidable force. The states and each federal water agency attempted to achieve some influence in the Council by having an important staff position filled by someone who understood their interests.

Thus the Deputy Director, Reuben Johnson, came from the Corps of Engineers (Chief of Planning in the South Pacific Division). The Assistant Director for Planning and Research Advisor, Harry Steele, came from the Department of Agriculture (Chief, Natural Resources Economics Division, Economic Research Service). The Assistant Director for State Grants, Harold Wilm, had been the

Commissioner of Conservation and Chairman of the Water Resources Commission of the State of New York.[188] During the period when the Water Resources Planning Act was being debated in the Congress, Wilm had been active representing the states through the Interstate Conference on Water Problems of the Council of State Governments, and had worked on the compromise between the states and federal agencies which finally cleared the way for passage of the Water Resources Planning Act.[189]

The Assistant Director for Policy and the Legal Advisor, Philip Glick, had been in private law practice, but prior to that time had been with the Departments of State, Interior, and Agriculture. The same prior federal water agency experience was to be found among the rest of the professional staff, the members of which had had experience with the Corps of Engineers, the Bureau of Reclamation, and the Federal Power Commission. Later, when the Assistant Director for Policy and Legal Advisor resigned, he was replaced by two persons: an Assistant Director for Policy, who came from the Bureau of the Budget, and by a General Counsel, who came from the Corps. A bit more of a state orientation came into the Council staff when W. Don Maughan became Director in March of 1970. Maughan had been the Chief, Interstate Planning Branch of the California Department of Water Resources. As head of the new Federal-State Programs Division Maughan picked Stuart T. Pyle, an engineer, who had worked for the California Department of Water

Resources for many years, and from 1967-1970 for a private engineering firm where he did water resources planning.

Caulfield held meetings of the COR almost every week, although on occasion, two weeks would slip by. Sometimes there were two meetings in one week. Meetings usually ran from 9:30 a.m. to 1:00 p.m. Staff members as well as representatives sat in on the meetings and discussed problems and issues set out in a written agenda which the representatives had received a few days earlier. Brief discussion papers, prepared by the staff, and other background materials were also sent to the representatives. A great deal of staff time was taken up by preparation for these meetings. The group that met did not change its composition very much and the members of the group got to know each other very well. Discussions were frank and often heated.

C. How Issues Arise

The problems with which the staff and the COR concerned themselves emanated from a number of sources. One source was the Water Resources Planning Act and the tasks it set for the Council: e.g., making a national assessment; administering a program of grants to states; establishing river basin commissions, developing comprehensive plans for river basins throughout the United States. These were specific tasks set out in the Act, and both the COR and the staff were well aware that they should be tackled promptly.

Issues and problems arose from other sources. Often a member would ask COR to consider certain problems; for example, the Secretary of Interior asked the staff and COR to consider issues concerning the Ramparts Project.[190] A representative of the COR might seek support from the other members of the Council for one of its policies or programs, as the Department of Agriculture did when it wished to propose legislation to the Bureau of the Budget that water quality should be included as a purpose in federally assisted watershed projects on the same cost-sharing basis as in other federal projects.[191] Another example occurred when the Department of Housing and Urban Development asked help from the COR and the staff in developing criteria for its Flood Insurance Program under Title XII of the Housing and Urban Development Act of 1968.[192]

The Bureau of the Budget asked the COR and staff to tackle a number of issues: (1) cost-sharing;[193] (2) a program, planning, and budgeting system for the entire federal effort in water resources;[194] (3) the drafting of guidelines to implement Executive Order 11296, which directed federal agencies to consider flood hazards when carrying out their activities and to reduce flood losses;[195] (4) taking over certain tasks from the Bureau of the Budget with regard to negotiation of and representation on commissions established by interstate compacts;[196] (5) developing a unified national program for flood plain management;[197] and (6) developing uniform techniques for determining flood flow frequences.[198]

The President himself could be the source of an issue that had to be resolved. President Kennedy had told his ad hoc Water Resources Council to work on cost allocation, reimbursement, and cost-sharing.[199/] President Johnson, in his Budget Message of January 29, 1968, informed the Congress that the Water Resources Council ". . .is developing a more appropriate interest rate." The COR and staff learned of that fact when they were shown an advance copy of the Budget Message by the Bureau of the Budget.[200/]

The Bureau of the Budget and Congressional committees also submitted a number of proposed or pending bills pertaining to water resources to the Council. The staff, with the concurrence of COR, commented upon them.[201/] However, so much time was spent by the COR and staff analyzing and developing positions on these bills that on May 26, 1971, the COR voted not to have the Council comment on any bills except in instances where the Chairmen of the Council or the Office of Management and Budget specifically requested comment or the COR voted to comment.

Issues also arose from the staff itself. Flood plain regulation is one example, and the result was model flood plain statutes and regulations developed by the Council for use by states and localities.[202/]

Later, after river basin commissions were established, they became the source of numerous issues to which the staff and COR had to devote themselves. The COR and the staff handled these issues in various ways. If an issue were not of great importance or did not take much time, the COR disposed of it, perhaps instructing the Director to write an appropriate letter. Many issues, not considered by the Director or the COR to be of high priority, were deferred, because of the overwhelming number of issues coming to the staff and the COR. Other issues were deferred because it was to the advantage of one or more COR member not to have it resolved. Issues which were complex and time consuming went to Task Forces, a committee, or the staff for necessary action.

Often a complicated or volatile problem was thrashed out over the course of many COR meetings.[203] In the early life of the Council the device of the interagency task force to study specific problems was frequently used. Separate task forces were set up to tackle issues involving water supplies and requirements,[204] flood control policy,[205] water quality control benefits and costs,[206] the Susquehanna Compact,[207] river basin management institutions,[208] institutional arrangements for estuaries,[209] and evaluation procedures.[210]

Some of the flavor of a COR meeting can perhaps be obtained from a summary of the agenda for the meeting of September 18, 1968. (This particular agenda is picked at random.) The COR discussed (1) rules and regulations to implement Title II of the Water Resources Planning Act, which deals with river basin commissions; (2) cost-sharing for water quality; (3) a Task Force report on the proposed Hudson River Basin Compact; (4) a request for a study of the problem of Channel Stabilization and Maintenance below federally constructed projects; (5) a request for a change in the boundary of the New England River Basins Commission; (6) cost-sharing for flood protection; (7) Council proposed budget estimates; (8) a proposed hearing on the discount rate; (9) a Task Force report on the consent legislation for the Susquehanna River Basin Compact: (10) coordinated budgets for comprehensive studies. Most of the issues were not disposed of at this meeting. Some were still with the Council three years later.

The kinds of issues that were submitted to a meeting of the members of the Council can be illustrated by reviewing the agenda for the Council meeting of November 12, 1968 (again picked at random). Topics included (1) the discount rate for use in plan formulation and evaluation; (2) a proposed executive order concerning the Council's role in interstate water compacts; (3) proposed consent legislation for the Susquehanna River Basin Compact; (4) cost-sharing for water quality; (5) the federal position on an amendment to the Delaware River Basin Commission's comprehensive plan concerning the Tock's Island pumped storage project; and (6) budget matters. These are matters that had previously been discussed by COR, and the COR or staff was requesting some kind of action on the matter from the members. For example, at this meeting, with respect to the proposed executive order on the Council's role in interstate water compacts, COR was seeking approval from members of a draft of that proposed executive order so that it could then be forwarded to the Bureau of the Budget for appropriate Presidential action.

D. Activities

1. Introduction

In the foregoing two sections we have attempted to describe, in the period under Caulfield's directorship, how the Council, the COR, and the staff worked, how issues arose, and what mechanisms were used to deal with those issues. In the course of that discussion we mentioned briefly a number of Council activities. Some of the major activities will now be discussed in more detail in order that we may better evaluate what the Council has done in the past six years. The activities include: (1) the establishment of river basin commissions, (2) maintaining relations with the river basin commissions, (3) making the national assessment, (4) developing water resources plans, (5) implementing the program of grants to the states, (6) developing principles and standards for water resource planning and project formulation, (7) reducing losses from flood hazards, (8) coordinating federal positions with respect to interstate compacts, (9) developing cost-sharing policies, (10) international activities, and (11) relations with the National Water Commission.

2. Establishing River Basin Commissions

Generally speaking, the President may establish a river basin commission on request of the Council or a state upon concurrence of one-half of the states in the basin.[211] Director Caulfield made the establishment of the commissions one of his top priority items,[212] and the task has been pushed with vigor by the staff through the present day. States have been continuously encouraged to set up river basin commissions and much staff time has been spent in this endeavor.[213] However, it was Council policy to have a state rather than the Council make the initial request for a commission and to wait until all states in the basin joined in that request before recommending to the President that he establish such a commission. After June of 1970, when four commissions had already been established, the COR began to consider the possibility of having a river basin commission established if less than the whole number of the states in the basin requested one.

By September of 1967 river basin commissions had been established for New England, the Great Lakes, the Pacific Northwest, and the Souris-Red-Rainy basins.[214] On January 13, 1971, an Ohio River Basin Commission was established.[215] On March 24, 1972, two more river basin commissions were established, one for the Missouri Basin[216] and the other for the Upper Mississippi Basin.[217] Thirty-two states are now members of one or more of these commissions. Part or all of the land area of these states is within the territorial jurisdiction of one or more commissions.

Some states are members of two commissions: Illinois, Indiana, New York, Ohio, and Pennsylvania are members of both the Great Lakes and the Ohio Commissions. Minnesota, a headwater state, is a member of four Commissions: Great Lakes, Upper Mississippi, Missouri, and Souris-Red-Rainy.[218]

President Nixon, in a letter of June 30, 1971, to Secretary of Interior Morton, expressed a special interest in planning for the Arkansas River Basin and encouraged the establishment of a river basin commission there. Secretary Morton, as Chairman of the Council, contacted the Governors of the seven basin states but found that some of the states felt they were not yet ready. A draft of his letter of reply to the President stated:

> "From past experiences in establishing the existing five commissions and two others pending, we have found that the best possible approach is to allow full time for the States to evaluate for themselves the advantages of working through a river basin commission."[219]

It is perhaps this patient policy which has resulted in the formation of seven river basin commissions. States have had to see how the river basin commission concept would work in practice and what benefits would accrue to them by forming one.

While there are other areas of the country where river basin commissions could be established, in some areas they are not likely to be set up. These are the areas covered by the Tennessee Valley Authority, and the Delaware and Susquehanna Federal-State Compact Commissions. Areas such as the Pacific Southwest and the Southeastern portion of the United States are organized for water resources planning under interagency committees and have not yet shown too much interest in establishing commissions, although the staff has made some attempts to have states in those areas consider forming Title II commissions.220/

3. Relations between the Council and the River Basin Commissions

The Council recommends to the President persons who might be appointed by him as river basin commission chairmen. It pays the salaries of the chairmen. With the change of administration in 1969, new chairmen were appointed for the Pacific Northwest, Great Lakes, and Souris-Red-Rainy Commissions. Frank Gregg, the original Chairman of the New England River Basins Commission, remained, however.

The Council contributes a portion of the operating budget of the commissions, which has traditionally been 50 percent of the total administrative expenses, although there have been pressures recently from the state members of the commissions to have the federal share increased to two-thirds and the states' share reduced to one-third. The 50 percent figure is the one, however, that the House and Senate Appropriations Committees have worked out and they would have to approve any change. Any principles, standards, procedures, and guidelines which are approved by the Council for federal participants in river basin planning are, of course, binding on the federal members of the commission. Since the federal role in the planning is essential, as a practical matter the federal principles, standards, procedures, and guidelines tend to apply to all of the members in their commission planning activities.[221]

The Council has the right to terminate a river basin commission.[222] It receives the commissions' annual reports. It reviews their by-laws. The Council also assists in the preparation of the commissions' comprehensive coordinated joint plan, and reviews that plan and comments on it before the plan goes to the President and the Congress. The Chairmen of the commissions are now observers on the Council. The Council is available to assist the Chairmen in achieving consensus among the federal members on disputed issues.

Thus there are many links between the river basin commissions and the Council, and the tendency has been to make those links stronger within the limits of the Council's budget, staff, and other commitments. Recently, Secretary Rogers C. B. Morton, the Chairman of the Council, visited a meeting of the Pacific Northwest River Basins Commission, thus personally reaffirming the administration's interest in the success of the Commission's work. This was the first time a Chairman of the Council had ever visited a river basin commission.

As the river basin commissions have pursued their work, other problems and national interests have emerged which have required some Council action with respect to the commissions. The boundary of the New England River Basins Commission was changed to include portions of Long Island Sound.[223] With the increasing national emphasis on environmental concerns, the Environmental Protection Agency became a member of each river basin commission.[224] The Atomic Energy Commission became a member of the New England River Basins Commission,[225] and with the growing international problems in the Great Lakes, particularly pollution, the State Department became a member of the Great Lakes Basin Commission.[226]

4. The National Assessment

The Water Resources Planning Act requires the Council to prepare an assessment of the adequacy of water supplies necessary to meet the water needs of the various regions of the United States. The assessment is to be prepared biennially or less frequently as the Council may determine.[227]

One of the first tasks of the Council was to prepare such an assessment, and the first assessment was published in late 1968.[228] About 8,000 copies of the assessment and 13,000 summaries were distributed.[229] The task of making that assessment involved the coordinated efforts of many federal, state, and regional agencies and other organizations. Literally hundreds of persons throughout the United States were involved in its preparation.[230]

The first assessment surveyed the water supply-demand outlook for each of the twenty resource regions[231] of the United States in order to inform the President, Congress, and the public of the current and projected regional and national water needs and of current and prospective action necessary to meet those needs.[232] It found current water shortages and problems in many regions of the nation and its projections, using a time horizon of about 50 years, indicated growing needs and problems.[233/]

The Council conceives of the national assessment as a continuous activity. In January 1967 it approved a general plan for the assessment, a work plan for the first assessment, and a proposed program for the continuing national assessment.[234/] The plan itemized the elements which would have to be included in the assessment in order for it to support the functions of the Council. These elements included (1) present and future water supply and requirement problems; (2) water quality problems and the relation of quality to establish standards; (3) flood problems; (4) drought problems; (5) testing of probable consequences of alternative water policies; (6) identification of institutional and organizational problems; (7) an inventory of water and related land resource plans, projects, and investment schedules; and (8) provision for periodic reporting of current and projected use of resources and economic activity in each river basin.[235/]

Because of time and data limitations, the continuing assessment was divided into three phases. Phase I was to be an initial assessment of the adequacy of the national water supply based on available data and limited analyses. The First National Assessment was of this type. Phase II was to use more fundamental analytical frameworks, more detailed measurements, and would require substantial data inputs. It would build upon the results of the comprehensive framework planning program which the Council had begun for the twenty regions of the United States. Computer simulation models would be used in this second phase. Phase III was to be a continuing refinement of the Phase II.

After the publication of the First National Assessment, the COR and the staff wished to continue the work on the assessment and publish a second assessment possibly in 1971. However, the Bureau of the Budget thought that the assessment should be delayed. It argued that there was a lack of money, no adverse effects could be shown if there were some delay, and it had not yet been shown that the methodology for a new assessment would be an improvement over that used in the first assessment. The target date for the second assessment was then set for 1975.[236] The present plan is that the national assessment should be a continuing study with a report every five years.[237] A tentative handbook spelling out the approach for the 1975 assessment already has been prepared.[238] Additional staff will have to be hired by the Council for the assessment effort.

5. Development of Water Resources Plans

a. Framework, River Basin, and Single-Purpose Studies

The Senate Select Committee had asked the Executive Branch to develop by 1970 comprehensive plans for all the major river basins of the nation.[239] The President, in his Special Message on Natural

Resources to the Congress on February 23, 1961, accepted that goal. As one of his early actions to attain the goal, the President asked the Secretaries, who would comprise the Water Resources Council under the administration's bill, to review existing standards and procedures and make appropriate recommendations. Senate Document No. 97, issued on May 15, 1962, was the result.[240] Subsequently, on June 4, 1962, the Director of the Bureau of the Budget asked each of the four Secretaries, in order to lose no time while the administration's Water Resources Planning Act was pending in the Congress, to review federal agency efforts in developing comprehensive river basin plans, to identify and assign priorities, and to take steps to coordinate their planning programs.[241] The Secretaries delegated that task to their Interdepartmental Staff Committee, which began to work up a program and budget for developing the comprehensive river basin plans. By June of 1963 the four Departments--Interior, Agriculture, Army, and Health, Education and Welfare--had issued instructions calling, for the first time, for initial interdepartmental coordination of budget preparation in the field and for explicit indication of proposed transfers of funds between agencies of the various departments.[242] The Secretaries also developed a statement of principles and concepts applicable to their planning programs and consistent with Senate Document No. 97. The statement was sent to the agency field offices.[243]

The program developed by the Interdepartmental Staff Committee in 1963 called for 18 framework (Type 1) studies encompassing the nation (with the exception of Alaska) by 1970. Alaska was to be considered as a special case. In addition, 16 sub-basin (Type 2) plans, which were already under way, were to be completed.[244]

In 1962 the term "comprehensive framework study (Type 1)" meant a general and broad study of an area to "provide long-run economic projections of economic development, translation of such projections into demands for water and related land resource uses, hydrologic projections of water availability both as to quantity and quality, and projections of related land resource availability, so as to outline the characteristics of projected water and related land resource problems and the general approaches that appear appropriate for their solution."[245]

The term "Type 2 or feasibility study" meant a Type 1 study plus additional planning in sufficient detail to serve as a basis for authorization of one or more projects to be initiated in the next 10 to 15 years. Such a study usually encompassed a river basin, tributary basin, or a subregion.[246]

The term "Type 3 plan" was used to refer to a plan of a more confined geographic and analytic scope, usually relating to a specific project.[247]

The term "Type 4 plan" also was used and meant a survey by a state or local political subdivision for all or part of a state with federal agency participation.[248]

In 1965 the Water Resources Council inherited this program. The Council came into existence during a major drought in the Northeastern United States. At the request of the President, prior to hiring staff or receiving appropriations, it attempted to coordinate efforts to relieve the initial drought situation. It reported to the President and recommended specific emergency actions to be carried out by the various federal agencies, states, and localities involved. A number of steps were taken to solve the crisis: reservoirs were operated to provide minimum flows to keep salt water from moving up the Delaware River; non-water-supply reservoirs were tapped; interconnections were made among water systems; restrictions were imposed or used; the public cooperated to lower peak demands. The crisis was solved through coordination, but it vividly displayed the need for planning: had facilities and plans for their use been available, the effects of the drought could have been minimized and there might not have been an emergency.[249/]

One of the first major studies initiated by the Council related directly to the drought and covered the North Atlantic Region from Virginia to Maine. To the original 18 framework studies, two others were added, Alaska and the Tennessee Valley, making a total of 20 regional framework studies. Of these Type 1 studies, by June 21, 1971, one had been completed (Ohio River Basin), eight were to be completed in Fiscal Year 1972 (Columbia-North Pacific, California Region, Great Basin Region, Lower Colorado Region, Upper Colorado Region, Missouri River Basin, North Atlantic Region, and Upper Mississippi River Basin), and four more were in progress and would be completed later (Great Lakes Region, Lower Mississippi River

Basin, Souris-Red-Rainy Basins, and Puerto Rico). Seven framework studies still have to be initiated (Alaska, Arkansas-White-Red, Hawaii, South Atlantic Gulf, Tennessee, Texas-Gulf, and Rio Grande).[250] While the original goal of President Kennedy had been completion of the framework studies by 1970, budgetary constraints have stretched out the period of time.

Over an eight year period the total federal expenditure on framework studies through June 1971 was over $48 million.[251]

Of the Type 2 studies supervised by the Council, by June 21, 1971, eight had been completed and nine were in progress.[252] The total cost of these studies over an eight year period has been approximately $40 million.[253]

b. Coordinating Mechanisms

Three different coordinating mechanisms are used by the Council in the preparation of the framework studies. The first mechanism is the ad hoc coordinating committee, chaired by a representative of a federal or state agency and composed of representatives of the participating state and federal agencies. The studies for the North Atlantic, Ohio, Upper Mississippi, and Lower Mississippi were set up under this procedure.

The second mechanism is the interagency committee chartered by the Council. The forerunners of these committees were inherited from ICWR. The committees usually have a rotating chairmanship and are composed of participating federal and state agencies. The studies for the Missouri, Upper Colorado, Lower Colorado, Great Basin, and California Region were handled under this procedure.

The third mechanism is the river basin commission established under Title II of the Planning Act. The Columbia North Pacific, Great Lakes, and Souris-Red-Rainy studies were set up under this mechanism.[254]

c. The New Planning Policy

W. Don Maughan became the second Director of the Council in March of 1970. Under his guidance the Council adopted a new policy statement for water and related land resources planning.[255/] The objectives of the new policy are threefold: (1) to establish levels instead of types of planning and to interrelate the levels; (2) to upgrade federal, state, and local coordination and communication; and (3) to strengthen study management by placing authority and responsibility in a single individual, who reports to the Council or a river basin commission, rather than in a committee. Under the policy statement, planning is expected to provide a sound basis for well considered decisions among alternative or competing uses of the resources. Planning, according to the policy statement, should help meet the needs and desires of people including improved environmental quality, enhanced national and regional economic development, and a better quality of life. The planning effort should also help to achieve joint plans and programs. All interests, federal, state, local, and private, should be involved from the beginning of the planning effort to identify as many alternatives as possible. All means, developmental and non-developmental, of meeting the needs and desires of people should be considered. The planning process should identify the responsible entity for implementing the separable aspects of the plan or program and how individual actions relate to the total picture. Finally, the plan or program must have wide public acceptance.[256]

The method adopted by the Council in its policy statement leads from a broad national view of frameworks and assessments to detailed regional considerations of specific problems and issues. Each step in the process may disclose the need for special studies. The experience gained in each step is to be fed back into the process to define and refine ongoing and future elements of the process. The process seeks to avoid irreversible actions meeting short-term needs which might preclude meeting longer range needs.[257]

Under the new policy, planning is divided into three levels. Level A, Framework Studies and Assessments, seeks to combine the former Type 1 studies with the National Assessment process, which had been taking place separate from the planning process. In addition, the technical projections of population and economic activity would be worked into the Level A studies. These projections had been jointly funded by the Council's member agencies through 1970, but thereafter were to be funded by the Department of Agriculture and Commerce through the Office of Business Economics in Commerce and Economic Research Service in Agriculture, giving rise to the acronym, OBERS projections. The framework studies are to be continuously reappraised and revised in light of changing needs, emerging influences, and projections of population and economic activity. Just as the National Assessment contributes to the framework studies, the studies are expected to contribute to the National Assessment.[258]

Level B, Regional or River Basin Plans, will be prepared to resolve complex long-range problems identified by framework studies and the National Assessment. Their scope and detail are expected to vary widely, and will be used only where an intermediate step is needed between framework and implementation level studies. The river basin is not necessarily the planning unit for the Level B studies. Political subdivisions, economic regions, and demographically significant or other areas may be used. Level B plans are expected to be completed within three years from their inception.[259]

Level C, implementation studies, are to be undertaken by a single federal, state, or local entity for the purpose of authorization or development of plan implementation. The studies encompass a spectrum from preservation to full development. They may lead to administrative, legal, or other non-development action programs as well as to structural solutions. Implementation studies are to include multiobjective considerations, benefit and cost determinations including all intangible aspects, and cost allocation, cost-sharing, and repayment analysis. The implementation studies stemming from regional plans are expected to be completed within two years.[260]

The Policy Statement also attempts to strengthen the management of multi-agency studies and to get away from the "lead agency" concept. Study leaders are to be provided by the Council or by river basin commissions (in their area) for framework studies, the National Assessment, and multi-agency, regional, or river basin plans.[261]

On February 10, 1971, the Council issued a policy statement with regard to the filing of Environmental Statements required by section 102(2)C of the National Environmental Policy Act of 1969 (P.L. 91-190). All framework studies and assessments, regional or river basin plans, and ongoing Type 1 and Type 2 comprehensive river basin studies must be accompanied by such a statement.[262] The new proposed principles and standards, published in the Federal Register on December 21, 1971,[263] provide for consideration of environmental impacts in all water and related land resources plans. It is expected that the policy statement with regard to the environmental impact statements will be revised after the principles and standards are approved by the President.

In addition to the New Planning Policy of July 22, 1970, and the Policy Statement with regard to the filing of Environmental Statements issued on February 10, 1971, the Council on September 8, 1971, issued a new policy for revision of completed regional or river basin plans. The new policy recognizes that plans are not static and that after they are submitted to the President and the Congress, modifications or revisions may be warranted in light of changing economic and social goals, and to accommodate technological advances and other circumstances.[264/]

d. The Western United States Water Plan

On September 30, 1968, Congress passed the Colorado River Basin Project Act.[265/] The Act directs the Secretary of Interior to conduct a comprehensive reconnaissance investigation and develop a plan to meet the current and projected water needs of the 11 western states which lie wholly or partly west of the Continental Divide: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The purpose of the regional water plan is to serve as a framework under which projects in the Colorado River Basin may be coordinated and constructed with proper timing so that there may be an adequate supply of water for the projects.[266/] Title II of the Act prohibits studies of any plan for importation of water into the Colorado River Basin from any other natural river basin outside of that basin for a period of ten years. The Secretary of Interior assigned the responsibility for conducting the study to the Bureau of Reclamation with active participation by agencies of the Department of Interior, the Water Resources Council, the 11 states, river basin commissions and committees, the Western States Water Council, other federal agencies, and interested parties.

Passage of the Act placed the major responsibility for the development of planning in the 11 western states on the Secretary of Interior and not on the Water Resources Council. Thus the Act raises fundamental issues as to how plans, developed under the supervision of the Water Resources Council, are to be related to the Westwide Study, how the Water Resources Council is to be related to the Plan, and how the Westwide Study is to fit with plans developed under Council auspices. The Act did say that:

> "Pursuant to the authority set out in the Reclamation Act . . . and the provisions of the Water Resources Planning Act . . . with respect to the coordination of studies, investigations and assessments, the Secretary of the Interior shall conduct full and complete reconnaissance investigations for the purpose of developing a general plan to meet the future water needs of the Western United States. Such investigations shall include the long-range water supply available and the long-range water requirements in each water resource region of the Western United States."[267]

The Conference Report, dated September 4, 1968, interpreted the coordination language quoted above as follows:

> "The investigations and development of the plan are to be in accordance with reclamation law, and the studies, investigations, and assessments of water availability must be coordinated with other water planning activities being conducted under the Water Resources Planning Act. The purpose of the reference to the Water Resources Planning Act is to assure cooperation and coordination among all federal agencies, affected States and study commissions established pursuant to the Planning Act and to eliminate possible duplication in the overall water resources planning effort. The reference to the Planning Act does not, of course, subject the Secretary of the Interior to prohibition in that Act against the study of transient basin transfers of water."[268]

The role to be played by the Water Resources Council in this planning study is not yet clear. On February 10, 1971, in a discussion between Commissioner Ellis L. Armstrong of the Bureau of Reclamation and Mr. Wallace Christensen, Chief of the Denver Westwide Study staff of the Bureau, the Bureau saw the Water Resources Council having basic responsibility for the OBERS projections and acting in a consultant capacity on the discount rate, cost-sharing, and cost allocation.[269] Later, in the 1971 progress report on the Western U.S. Water Plan issued by the United States Department of Interior on June 30, 1971, the role of the Council was stated as follows:

> "Throughout the study period the Council -- in addition to general coordination activities -- can provide assistance in the preparation of coordinated budgets, policy guidance, application of the multiple-objectives of planning; it can provide guidance to State planning activities in a manner that will advance the Westwide Study, and coordinated related activities of the Pacific Northwest River Basins Commission."[270]

It is clear that while the Water Resources Council will play a role in the coordination of the various federal and state agencies involved in the plan, the major coordinating role will be done by the Bureau of Reclamation.

The Westwide Study will use as a resource many of the Type 1 and 2 framework studies and reports, state and river basin commission plans, and other federal or federal-state water research and inventory efforts which already have been done throughout the West or are in the process of being completed.[271] The Study will impinge directly or indirectly on the activities of some 20 different water-oriented federal agencies. It relates closely to the studies of one river basin commission and three federal interagency river basin committees. It concerns directly the water planning efforts of 11 western states. The success of the planning effort will depend to a great extent upon the cooperation and coordination of the many participants.[272]

The Council will probably play a major role in the Study. The Council has already commented on the Study directly to the Commissioner of Reclamation.[273] The Council also has commented on the Westwide Study to the Appropriations Subcommittees on Public Works of both the House and the Senate. At the hearings held on April 22, 1971, the Director stated his view of the proper role of the Water Resources Council:

> "We feel the Water Resources Council's role to help formulate the plan of study, define scope and principles, standards, and criteria under which those studies will proceed. The Council's role in coordination depends largely on the decisions made within the Department of Interior."[274]

To avoid duplication in coordination, the Water Resources Council so far has limited itself to a consultive role on coordination. For Fiscal Year 1971-72 the role of the Council as spelled out in the Plan of Study is to assist in keeping the Plan of Study up-to-date and to distribute materials and make arrangements for seminars on projections and new general planning and evaluation policies.

The role of the Pacific Northwest River Basins Commission in this study is substantial. Its members have agreed to modify the original river basins plans so that a single Northwest Plan would be prepared which would if possible, with minor modifications, serve the needs of the commission's comprehensive joint plan, the Westwide Study, and the individual state water plans.[275/]

The Director of the Council has stated that one role for the Council would be to review and comment on the budget for the Westwide Study; that the Westwide effort should invest a major portion of its time and funding on a small select group of experienced planners in Denver headed by USBR personnel which would formulate and reformulate general plans with the advice and assistance of interested local, state, and federal agencies; and that very little time and money should be spent on traditional studies of topography, geology, hydrology, land conservation, etc., because most of that data are available and have received extensive analysis.[276/]

e. OBERS Projections

Projections of economic data are basic to a comprehensive planning program. While long-range projections may have only moderate reliability, many program justifications are based upon them. This fact was recognized by the President's ad hoc Water Resources Council in 1964, which felt that a standard set of technical projections should be an integral part of comprehensive water resources planning and should be adopted and used by the participating federal agencies.

In March 1964, the Office of Business Economics, Department of Commerce (OBE), and the Economic Research Service, Department of

Agriculture (ERS), undertook for the ad hoc Council a nationwide economic base study, now known as the OBERS program. The first phase of the program was completed by March of 1968. It covered about 200 water resource planning areas. The economic bases of the areas consisted of two parts: (1) a historical and current picture of the economy of each area, and (2) a projection of the economic pictures to the years 1980, 2000, and 2020. Projections were made as to income, employment, population, and production for these periods.[277]

The area economic pictures were designed for four major purposes: First, to provide large segments of the data needed to establish past and current relationships between water use and economic activity; second, to provide a framework for identifying the economic strengths and weaknesses of each area and the underlying causal factors; third, to furnish the analytical materials from which the projections were fashioned; and finally, to form the base against which the economic consequences of alternative plans could be assessed.[278] These historical and base figures generally have become the basis for the framework studies currently being completed.[279]

The projections completed by March of 1968 were based on input data which could be assembled quickly and upon methods that could be implemented with little research development. More sophisticated projections are now being developed jointly by OBE and ERS. The analytical program, when fully developed, is intended to provide a systematic and consistent means for tracing the effect of a specified change in the geographic distribution of production in one industry on related industries of the economy; a means for testing the sensitivity of a given parameter of changes, population growth or export markets for example, on the magnitude and structure of the economy; a basis for measuring the influence of differential growth rates among regions and areas on demand for consumer goods and the subsequent effect on the competitive balance among regions and areas in the production of such goods and services; and a means for tracing the influence of resource constraints or specified changes in such constraints through the structure of local and regional economies.

The program is also expected to provide a much needed framework of statistical information and analysis for continuing appraisals of the adequacy of the natural resource base to satisfy the demands created by a growing population, rising levels of productivity and income, and increasing quantities of pollutants.[280]

f. Central Funding

Central management of comprehensive water and related land resources studies, under a designated individual leader, was adopted by the Council of Members on June 30, 1970, and set forth in the Policy Statement of July 22, 1970. The Director then proposed that the Council approve the concept of central funding through the

Council of all planning studies as a logical sequence to central management and in order to make comprehensive planning more effective. The Council approved of the concept, and even attempted to have the administration approve a draft bill which would have amended the Water Resources Planning Act to make central management and central funding more explicit. However, the Office of Management and Budget rejected the concept of central funding, apparently because of its belief that the Council should not become an operating agency.

Under the present system of budgeting for planning studies, the budget for a particular plan is developed in the field by the agencies participating in the entity in charge of the plan, such as an interagency committee. The agency field elements then submit their requests to central headquarters approximately a year and a half in advance of the appropriation. The Council helps coordinate the budgets for the federal agencies participating in the plan, and then the Council submits the budget to the Office of Management and Budget for approval. If approved, the various agencies include the appropriate approved sum in their overall budgets.

Thus, for example, if the contribution to a particular plan by the Corps of Engineers is to be $30,000, the Corps includes that sum in its overall budget to be submitted to Congress. The same would be true of all the other agencies participating in the plan. The point is that the required amounts become agency or departmental budgets as opposed to study budgets.

It has been argued that there are several adverse consequences of this system. One consequence is that money appropriated as part of an agency budget may never become part of a study budget: the agency may find that it may have a more pressing need for the money. Second, if the money is used for the study, the agency may manipulate its contribution to the study to ensure that its pet projects are made a part of the plan. Third, the appropriation of the money to the agency often makes it much more difficult to shift funds as changes occur in the planning process. Finally, an agency may decide not to seek money for its contribution to a plan because of budgetary ceilings and its other and higher priorities for the money appropriated to it. The funding arrangements for a number of studies have become unwieldy and in the past often have induced the Corps and other agencies to request increased budget amounts so that funds could be transferred to other agencies who otherwise might not be able to participate fully in the joint planning efforts.

The central funding issue has not yet been resolved. Presumably the Council members could carry the issue to the President in opposition to the Office of Management and Budget if it were in their interests to do so. The central funding issue, if carried to the President, would raise another issue: is it the proper role of OMB to decide the policy issue of central funding for planning and the issue of how far the Council should get involved in planning operations? The members of the Council may be afraid to oppose OMB on this issue for fear of retaliation when OMB considers the budgets for their particular departments.[281/]

g. Improving Federal, State, Local, and Private Cooperation

When W. Don Maughan became the second director of the Council in March of 1970, he saw a need to improve communications between and among the staff of the Council, the Washington level staffs of the Council's member agencies, the field personnel, and states, local entities, and private groups during all phases of the planning process. He also saw the need for more effective training measures and the need for inputs from the field into basic policy formulation.

The Director has taken a number of steps to accomplish these goals. One step has been to establish a Federal-State Programs Division within the Council staff organizational structure. This Division combined the functions of the old Office of State Grants and the Office of Planning. The Division now contains three regional leaders, one each for the Western, Central, and Eastern parts of the United States. They are expected to spend a great deal of time outside of the Washington, D.C., office and become thoroughly familiar with the field activities. The leaders are to help in the development of plans for new studies and in the arrangements for funding of study participants. They are also to work closely with the state planning organizations, river basin commissions, interagency committees, and the federal agencies. They are expected to feed back to the Washington headquarters not only the views of the field level institutions, but the successes and failures in carrying out the Council guidelines. Perhaps most important of all, the state grant program has become a part of the regional leaders' responsibilities, thus linking the development of state water plans to the overall coordinated federal-state comprehensive planning program.

The regional leaders are to be assisted by a liaison team staffed by member agencies at the Washington, D.C., level in order to help communication between Washington and the field and to help interagency communication at both levels.[282/]

Another step taken to improve communication and the planning process has been to invite states, universities, river basin commissions, and field representatives of other institutions to become active members of small ad hoc task forces developing policy or commenting on drafts of new policy statements being developed under the leadership of the Council. Such task forces were established to work on new planning policy, to review and comment on a draft of new principles and standards, and to begin deliberations on new cost-sharing policy.[283/]

A standing state advisory committee (SSAC), representing the 50 states, was established to provide the Council with the views and opinions of state interests. The SSAC is the Executive Committee of the Interstate Conference on Water Problems (ICWP), a unit of the Council of State Governments. The ICWP is composed of state officials serving in an official capacity as a result of election, by statute or by designation by their respective states for the purpose of facilitating cooperation, consultation and exchange of information among state officials and agencies as to the conservation, use, development, management, and administration of water and related land resources.[284/] The Council and the ICWP have also sponsored joint seminars on key issues in the water resources field. The most recent seminar dealt with the subject of Public Participation. The one prior to that, held in February of 1971, discussed the subject of Water and Related Land Resources Management, and was held to review the effectiveness of the Water Resources Planning Act.[285/] These seminars usually last for two to three days and are well attended by people representing state, federal, and private groups.

The Policy Development Committee of the Council has been exploring ways to develop relationships with representatives of local governments, minority and underprivileged groups, and environmental interests in order that their viewpoints would be heard. The possibility and techniques of setting up a number of advisory committees is being considered.[286/]

The need for improved communications and coordination stems in part from the great number of planning efforts in water and related land resources taking place outside the auspices of the Council. Thus, in addition to the National Assessment, the Type 1 framework and Type 2 comprehensive studies, and the Level A, B, and C studies being done by either the Council, the river basin commissions, the interagency committees, and the ad hoc committees, there are the following planning efforts: state water plans; river basin plans of the Federal Water Quality Administration; wild and scenic river studies; special Congressional study authorizations, such as water planning for Appalachia, the Northeast Water Supply Study, and the Western United States Water Plan; investigations under various grant programs; national estuary studies; coastal zone studies; Soil Conservation Service-State studies; United States Bureau of Reclamation feasibility studies (Type 3), reconnaissance studies, and state water planning studies; Corps of Engineer survey reports; HUD "701" studies; and studies and plans formulated by various compact commissions such as the Delaware River Basin Commission.[287/]

Many laws which have been passed in the last few years have given new and more definitive directions to federal participation in planning for water and related resources. These laws implicitly or explicitly have emphasized the need for improved communication and coordination by the Water Resources Council.[288/] Some of these major enactments are as follows:

1. The Appalachian Regional Development Act of 1965 (Public

Law 89-4). This Act authorizes the preparation of a comprehensive plan for development of water and related land resources of the Appalachia Region. The plan is to be an integral part of the regional economic development program authorized by the Act.

2. The Federal Water Project Recreation Act of 1965 (Public Law 89-72). This Act provides for full consideration of opportunities for recreation and fish and wildlife enhancement in federal projects under specified cost allocation and cost-sharing provisions.

3. The Public Works and Economic Development Act of 1965 (Public Law 89-136). The Act establishes national policy to use federal assistance in planning and constructing public works to create new employment opportunities in areas suffering substantial and persistent unemployment and under-employment. The Act provides for establishing federal-state regional commissions for regions that have lagged behind the nation in economic development.

4. The Water Quality Act of 1965 (Public Law 89-234) and subsequent amendments. This Act provides for establishing water quality standards for interstate waters. The water quality standards provide requirements and goals that must be incorporated into planning procedures.

5. The Act authorizing the Northeastern Water Supply Study in 1965 (Public Law 89-298). In this Act Congress recognized that assuring adequate supplies of water for metropolitan centers of the United States was a problem of such magnitude that federal assistance was required.

6. The Clean Water Restoration Act of 1966 (Public Law 89-753) provides assistance for developing comprehensive water quality control and abatement plans for river basins.

7. The Department of Transportation Act of 1966 (Public Law 89-670). This Act provides standards for evaluating navigation projects. It provides for the Secretary of Transportation to be a member of the Water Resources Council.

8. The Wild and Scenic Rivers Act of 1968 (Public Law 90-542) provides that in planning for the use and development of water and related land resources consideration shall be given to potential wild, scenic, and recreational river areas in river basin and project plan reports, and comparisons are to be made with development alternatives which would be precluded by preserving these areas.

9. The National Flood Insurance Act of 1968 (Title XIII, Public Law 90-448) provides that states, to remain eligible for flood insurance, must adopt acceptable arrangements for land use regulation in flood prone areas.

10. The Estuary Protection Act of 1968 (Public Law 90-454) outlines a policy of reasonable balance between conservation of natural resources and natural beauty of the nation's estuarian areas and the need to develop such areas.

11. The National Environmental Policy Act of 1969 (Public Law 91-190) authorizes and directs the federal agencies in the decision-making process to give appropriate consideration to environmental

values along with economic and technical considerations. The results of the analyses are to be included in proposals for federal action.

12. The Environmental Quality Improvement Act of 1970 (Title II of Public Law 91-224) further emphasizes Congressional interest in improving the environment and the responsibilities that states and local governments have for implementing the policy.

13. The Flood Control Act of 1970 (Public Law 91-611) includes the statement that "it is the intent of Congress that the objectives of enhancing regional economic development, the quality of the total environment, including its protection and improvement, the well being of the people of the United States, and the national economic developments are the objectives to be included in federally financed water resource projects, and in the evaluation of benefits and costs attributable thereto, giving due consideration to the most feasible alternative means of accomplishing these objectives."

The increased number of water related activities being undertaken by various federal agencies has raised the issue of whether the membership of the Council should be changed. The Council had agreed that the Secretaries of Commerce and of Housing and Urban Development and the Administrator of the Environmental Protection Agency should become full statutory members of the Council,[289] and appropriate legislation had been drafted. However, no further action was taken after the administration introduced a bill to establish a Department of Natural Resources.[290]

h. Coastal Zone and Related Land Use Planning

The relationship of the coastal zone and estuarine areas to river basin planning has long been a concern of the Council, in part due to the rapid development and indiscriminate use and abuse of the coastal zones and the estuaries in the last few years, and also because of some jurisdictional problems that have arisen between planning for river basins and planning done by other agencies for the oceans, the estuaries, and the coasts. Early in its life, the Water Resources Council established relationships with the National Council on Marine Resources and Engineering Development.[291] Some of the studies of the Marine Resources Council--for example, studies involving the Great Lakes--overlapped with studies being done by the Great Lakes River Basin Commission, and there was need for coordination.[292] The report of the Marine Council's Committee on Multiple Uses of the Coastal Zone was reviewed by a task force of the Water Resources Council and commented upon.[293] The Council was careful to comment only with respect to the coastal zone but not on matters involving the oceans in order to avoid duplication of functions.[294]

A number of the states are now using Title III grant funds for water and related land resources planning in the coastal zone. Some of the river basin commissions are also working closely with the states involved with coastal zone management problems. For example, the New England River Basins Commission is working with involved states to develop a program for the management of water and related land resources in the coastal zone from the Merrimack River to Narragansett Bay. The program will consider protection of ecological systems, marine resources utilization, water pollution control, flood and hurricane protection, navigation, estuaries, and wetlands management, as well as other factors. The Great Lakes Basin Commission as part of its framework study has attempted to determine the requirements for use of water and related land in the coastal zones of the Great Lakes.[295]

The Council also became involved in various estuarine problems. It commented on the national estuarine pollution study of the Federal Water Pollution Control Agency. It also considered possible institutional arrangements for managing estuaries.[296]

i. Wild and Scenic Rivers

The Wild and Scenic Rivers Act of 1968 (P.L. 90-542) declared a national policy to preserve and protect certain rivers in the United States because of their scenic, recreational, geologic, fish and wildlife, historic, cultural, and other similar values by establishing a national wild and scenic rivers system. Implementation reports of the Departments of Agriculture and Interior on scenic and wild river proposals are prepared in accordance with the criteria in the Act and provide the basis for authorization of wild and scenic rivers, either by Act of Congress or as state-sponsored units of the national system upon approval of the Secretary of Interior.

The authority of the Water Resources Council for review and comment on wild and scenic rivers proposals is provided generally in Section 4 of P.L. 90-542 as follows:

> "Section 4(a). . . . Every such [wild and scenic rivers] study and plan shall be coordinated with any water resources planning involving the same river which is being conducted pursuant to the Water Resources Planning Act.
>
> "Section 4(b). Before submitting any such report to the President and the Congress, copies of the proposed report shall, unless it was prepared jointly by the Secretary of the Interior and the Secretary of Agriculture, be submitted by the Secretary of the Interior to the Secretary of Agriculture or by the Secretary of Agriculture to the Secretary of the Interior, as the case may be, and the Secretary of the Army, the Chairman of the Federal Power Commission, the head of any other affected Federal departments or agency. . . . Any recommendations or comments on the proposal which the said officials furnish the Secretary or Secretaries who prepared the report within 90 days of the date on which the report is submitted to them, together with the Secretary's or Secretaries' comments thereon, shall be included with the transmittal to the President and the Congress. . . ."

Reports of the Departments of Agriculture and Interior on proposals for wild, scenic, and recreational rivers are transmitted to the Water Resources Council for review to ensure coordination with the Water Resources Planning Act. The Council recently completed reviews on the Upper Iowa River, Iowa, and the Suwannee River in Georgia and Florida. Both proposals were found to be compatible with comprehensive basin plans and the Council concurred in their designation as wild and scenic rivers. Proposals for other rivers to be included in the National Wild and Scenic Rivers system are also coming to the Council.[296A/]

In commission areas, the river basin commissions prepare and coordinate comments on these proposals.

j. Priorities Reports

Under the Water Resources Planning Act, each river basin commission is responsible for recommending long-range schedules for priorities for data collection and analysis, investigations, planning, and construction. Some of the Congressional committees requested that the list of priorities be submitted annually, before completion of a final plan by a river basin commission. There has been some reluctance on the part of the Council of Representatives to send these reports forward to the Congress. The Council had issued guidelines to the commissions for assigning priorities and in cooperation with the river basin commissions is now revising those guidelines. A priorities report is intended to clearly and concisely show, in one summary document, a river basin commission's judgment concerning (1) what programs are needed throughout the commission area, (2) when these programs should be implemented, and (3) why the programs are required at the recommended time. In the view of the Director, experience in revised approaches will make these reports of growing value as a coordination tool and provide a common base of information.

The process of preparing a priorities report by a river basin commission should help to rethink periodically the problems and opportunities in river basin commission areas. The process should also provide an opportunity for involving public and private interests.

In 1971 three of the river basin commissions did not submit priorities reports because ostensibly little change had occurred since their last report. The Pacific Northwest River Basins Commission, however, did submit such a report.[297/]

6. Grants to States

Title III of the Water Resources Planning Act sets forth a program of grants to states to be administered by the Water Resources Council. The grants are for the purpose of increasing the capabilities of the states in water resources planning. In 1966 the Council found that twelve states were doing no water resources planning. Five states and the District of Columbia were spending less than $6,000 per year. California, Indiana, Louisiana, New York, Oregon, and Texas were spending $400,000 or more per year, with California spending more than any other state: $7,500,000 in the year ending June 30, 1965.

Under the Title III program, state expenditures in FY 1965 for water and related land resources planning became the base above which federal grants would provide up to 50 percent of state augmented expenditures. In the first year of the grant program, FY 1967, all but six states and the Virgin Islands applied for a grant. In FY 1971 all 50 states, Puerto Rico, and the District of Columbia are now participating. The Virgin Islands, the only remaining potential participant, has indicated an interest in participating.

The Planning Act authorizes a ten-year program of federal grants of $5 million per year. The original federal appropriation in FY 1967 was only $1,750,000 and has not increased much per year since that time. In FY 1970 the appropriation was $2,375,000; in FY 1972, $3,600,000. For FY 1973 the Council is seeking the full amount of the authorization: $5 million. Between 1967 and 1971 the Title III grant program provided a total of $12.5 million in federal funds.

In 1967, the first year in which grants were made to states, 142 professional state staffs were paid in whole or in part from Title III or state matching funds. Each year the program has shown an increase in state planning personnel and in 1971 some 533 technical staff in the states were engaged in approved program planning activities. In some states, such as Idaho and North Carolina, all the planning staff are associated with the grant program while in others, like California, New York, and Texas, only a few persons are engaged in grant program activities. In a few other cases due to state restrictions or other difficulties, federal funds are not used to pay state employees and grant allotments are used mainly for professional consulting services. In addition to recruiting and training competent additions to their staffs, the states have greatly increased their participation in federal-state planning efforts and have accelerated statewide planning efforts.

In FY 1971 the states showed a $16,800,000 increase in their planning efforts over what they spent in the base period year of 1965, nearly two and one-half times the 1965 figure.

Some examples of the effectiveness of the program can be given. In Florida, the scheduled completion of a state water plan has been moved forward to 1975 from the 1980 date that would have been the target without the Title III program. Mississippi, because of specific state legislative appropriation increases to match Title III funds, has been able to enlarge its central technical staff and thereby become a full partner in the many federal-state planning efforts going on in the state. Major emphasis has been given to the Lower Mississippi Comprehensive Framework Study. Idaho spent some $574,000 in FY 1971 for statewide water and related land resources planning. In FY 1965 it spent practically nothing for this purpose. By June of 1971 it had developed a staff of 16 professionals and was actively participating in the work of the Pacific Northwest River Basins Commission and in the Columbia-North Pacific and the Great Basin Framework Studies.

The Council induces the states to build up their professional planning staffs for water resources and not rely on outside consultants, although it realizes that in some instances consultants are necessary. Under the formulae used by the Council in making Title III grants, states receive proportionally more money if the money is spent on their own planning staffs rather than on the hiring of consultants.[298/]

a. Consolidated Grants

In addition to federal grants of funds under Title III of the Planning Act for water resources planning, states receive federal grants for water resources programs and activities from a number of federal agencies. It has occurred to some people that these various grant applications from a state could be consolidated and submitted as one application to the Water Resources Council. The first such application came to the Council from the state of Ohio in 1970.

In 1969 the Governor of Ohio transmitted to the Secretary of Housing and Urban Development an application for a grant of "701" funds for over $2 million to be expended over a 2-1/2 to 3 year period. The application for proposed planning in Ohio included areas of responsibility normally funded by agencies other than HUD: the Bureau of Outdoor Recreation, the Federal Water Quality Administration in the Department of Interior, the Economic Development Administration in the Department of Commerce, the Farmer's Home Administration in the Department of Agriculture, the Solid Waste Program in the Department of Health, Education, and Welfare, and the coordination activities normally covered by the Water Resources Council. The Secretary of HUD transmitted Ohio's application to the Council, and after discussion between the Council staff and the Ohio Department of Natural Resources, a final consolidated application was submitted to the Council and approved by the Members.

The Council believes the consolidated grant application concept is workable and intends to encourage its use. A number of states have indicated their desire to use this approach.[299/]

7. Principles and Standards for Planning Water and Related Land Resources

Section 103 of the Water Resources Planning Act requires the Council to establish with the approval of the President principles, standards, and procedures for federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of federal water and related land resources projects.[300/] On December 21, 1971, after several years of intensive effort, the Council published proposed principles and standards in the Federal Register.[301/]

In the Flood Control Act of 1936 Congress stated a policy that ". . . the Federal Government should improve or participate in the improvement of navigable waters or their tributaries, including watersheds thereof, for flood-control purposes if the benefits to whomsoever they may accrue are in access of the estimated costs, and if the lives and social security of people are otherwise adversely affected."[301A/]

Interpretation of that statute resulted in the development of various analytical procedures to evaluate the benefits and costs of proposed projects. These procedures recognized that all benefits and all costs must be considered, but there was a tendency to rely primarily on market or monetary considerations with much less consideration being given to non-monetary and intangible benefits. Such procedures were first published as "Proposed Practices for Economic Analysis of River Basin Projects" in May 1950 and revised in May 1958. On December 31, 1952, the Budget Bureau issued Circular No. A-47 which informed the federal agencies of the considerations which would guide the Bureau of the Budget in its evaluations of projects. Senate Document No. 97 followed on May 15, 1962, and replaced Budget Circular No. A-47. Senate Document No. 97, with the supplements thereto, now contain policies, standards, and procedures for the formulation, evaluation, and review of plans for use and development of water and related land resources projects. It is this document which will be superseded by the new principles and standards which have just been published.

The proposed new standards have been developed by the Council to systematically relate all aspects of water and related land resources planning to national, regional, environmental, and quality of life objectives. If and when adopted, these planning principles would be used by almost all federal agencies in their project and program planning and evaluation of water and land resources. Federal grants for construction of sewage facilities apparently are not covered by the principles.[301B/]

The proposed principles and standards reflect the rising public concern about environment and quality of life. This concern has been reflected in a series of Congressional enactments and executive policies.[302/] In part they have led the Council to recommend a multi-objective system of planning that does consider all benefits, costs, and effects as directed by the Congress.

In 1968 the Council decided to reappraise the then current evaluation practices used in planning. The Council appointed a special task force to conduct the review. An initial public hearing was held in Washington, D.C., on January 13, 1969, to solicit views and recommendations. The preliminary report of the special task force proposing a multi-objective approach to water and land resources planning was published by the Council in June 1969. The Council directed that the issues and the proposals in the report be widely discussed and tested. Nine public hearings were then held and tests were conducted on the proposed procedures. On the basis of the tests and comments and suggestions received the task force submitted its final recommendations to the Water Resources Council for consideration on August 12, 1970.

The task force concluded that a multi-objective approach was practical and that meaningful results and uniform application could be achieved by establishing carefully structured principles and standards and procedures for planning.

In the August 12, 1970, submission by the special task force, the task force concluded that planning for the use of water and land resources should be carried out in the context of four broad objectives relating to national economic development, environmental quality, quality of life, and regional development. It also concluded that each of the objectives should be given equal consideration in the conservation, development, and use of water and land resources. As published in the Federal Register of December 21, 1971, however, the environmental quality and the quality of life objectives seemed to have been merged into a single environmental quality objective.[303]

Under the multi-objective approach a system of accounts is developed to show the beneficial and adverse effects on all objectives prepared for each alternative plan. Values are expressed in appropriate monetary or quantitative units or in appropriate qualitative terms. The new standards require development of alternative plans for each project to provide maximum opportunity to compare advantages and disadvantages of each approach. The formulation and evaluation of water and land resource plans and projects in the context of the multi-objectives and the system of accounts helps to examine the tradeoffs among objectives. The system of accounts and the principles, standards, and procedures do not make final judgments as to whether or not projects should go ahead, but they do provide information and isolate factors which a decision-maker should have when deciding whether or not to implement a plan and build a project.

Hearings on the new principles and standards were held in the spring of 1972. The Council then will make appropriate modifications in the proposed principles and standards if necessary.

One of the main purposes of the principles and standards is to set up the same conceptual framework for everyone to use in developing water and related land resources plans. Although the principles and standards would apply only to federal agencies, the Council staff hopes that the states would also use the system of accounts which have been proposed.[304]

a. The Discount Rate

Under the proposed principles and standards the discount rate to be used in planning would be set at 7 percent for the five years after the principles and standards take effect. The 7 percent figure was set forth in the News Release of the Water Resources Council for December 21, 1971, which announced the publication of the proposed principles and standards. However, the proposed principles and standards do not have a numerical designation for the discount rate. The proposed principles state that the discount rate will be established in accordance with the following concept:

> "The opportunity cost of all Federal investment activities, including water resource projects, is recognized to be the real rate of return on non-Federal investments. The best approximation to the conceptually correct rate is the average rate of return on private investment in physical assets, including all specific taxes on capital or the earnings of capital and excluding the rate of general inflation, weighted by the proportion of private investment in each major sector."[305]

At the present time (FY 1972) the discount rate is set at 5-3/8 percent under a formula which does not use the opportunity cost of money. The present discount rate is based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity. However, in no event is the discount raised or lowered more than one quarter or one percent from the previous year.[306/]

The discount rate to be used in the evaluation of water and related land resource projects has been a sharp issue between the proponents and opponents of an expanded water development program. As the discount rate is increased it tends to reduce future benefits. A high discount rate can eliminate marginal projects and large projects which have benefits accumulating slowly over a long period of years, such as river navigation projects. The Office of Management and Budget has consistently pushed the use of a higher interest rate, and one of the reasons the proposed principles and standards were not issued earlier was partially due to the controversy between the Water Resources Council and the Office of Management and Budget over an appropriate discount rate.

Even though the issue has been resolved for the time being in the Executive Branch at a 7 percent rate for the next five years, legislation introduced in the Senate on September 29, 1971, may, if enacted, lower the rate to about 3-1/2 percent.[307/] The formula used in Section 10 of the bill is the average rate of interest payable by the Treasury on interest-bearing marketable securities of the United States outstanding at the end of the fiscal year preceding such computation which upon original issue have terms to maturity of 15 years or more. The bill was introduced by Senator Jennings Randolph for himself and Senator Jackson.

The bill does more than establish a lower interest rate, and its history is worth recounting.

On August 4, 1971, Senator Jennings Randolph sent a letter to Rogers C. B. Morton, the Chairman of the Water Resources Council, in which he noted that the task force report on the principles and standards had been under review by the Office of Management and Budget since October 1970, a period of almost ten months. Senator Randolph's letter also noted that OMB was proposing to use the opportunity cost of money which would necessitate a discount rate in the range of 7 to 10 percent. Senator Randolph was highly critical of OMB for delaying the task force report and for insisting upon the higher discount rate. He therefore requested that the Water Resources Council develop appropriate language for a bill which would establish by legislation the principles and standards set forth in the task force report.

In a letter to W. Don Maughan, the Director of the Water Resources Council, Senator Randolph, in asking that appropriate legislation be drafted by the Council to implement the findings and recommendations of the Council task force report, specifically asked that the discount rate be based upon the provisions of Section V, subparagraph G, Item 2, of Senate Document No. 97. It was this interest rate formula that was incorporated in S. 2612, when it was introduced in the Senate two months later on September 29, 1971, after having been drafted by the Council on the express request of Senator Randolph.

The discount rate formula set forth in Senate Document No. 97 was used from 1962 until December 1969 when it was changed. For FY 1968 a computation of the discount rate under that formula was 3-1/4 percent.

The President's Budget Message of January 29, 1968, informed the Congress that the Water Resources Council "is developing a more appropriate interest rate." The Council, however, had not been developing such an interest rate and learned of the President's announcement when the Bureau of the Budget permitted it to see an advance copy of the Budget Message. The President indicated that the revised interest rate would be higher than the rate then in use because the current rate was significantly lower than the cost of borrowing by the Treasury.[308]

The plan of the Budget Bureau had been simply to recommend that the President announce a higher interest rate. But the Council's Director persuaded the Bureau staff that the procedures of the Council under Section 103 of the Act, which requires consultation of the states and discussion by the federal agencies, should be followed instead.

The federal agencies and the states were unhappy with the proposed change. Even though the President had already decided the issue, it took the Council 12 months to rewrite the formula. When the formula was finally approved by the President and issued in December of 1968, the discount rate went up from 3-1/4 percent to 4-5/8 percent and has increased every year thereafter by one quarter of one percent.[309]

It is difficult to foresee the consequences if S. 2612 becomes law. The interest rate under that bill would go back to the formula in Senate Document No. 97, which was very favorable for water resource project developments. The bill, however, would freeze into legislation the principles and standards and would make them much more difficult to change in light of experience, since Congress would have to pass new legislation for any change.

8. Flood Hazards

a. Implementation of Executive Order 11296

In addition to the Council's responsibilities in ensuring that flooding problems are adequately dealt with in the various planning activities being conducted under the auspices of the Council, the Water Resources Council has been engaged in a number of activities to help reduce losses from flood hazards.

In 1966 the Report by the Task Force on Federal Flood Control Policy[310] in Recommendation 5 stated:

> "The Federal Water Resources Council should specify criteria for using flood information and should encourage state agencies to deal with the coordination of flood plain planning and with flood plain regulation."

The Task Force also recommended that under a number of federal programs--mortgage insurance, loans, housing grants, assistance to lenders and for urban planning--steps should be taken to assure that state and local planning would consider the flood hazard.

In addition, the Task Force recommended that:

> "An Executive Order should be issued directing Federal agencies to consider the flood hazard in locating new Federal installations and in disposing of Federal land." (Recommendation 8)

On August 11, 1966, the President issued Executive Order 11296.[311] That Order required that Executive agencies, responsible for the construction of federal buildings, structures, roads, or other facilities, evaluate flood hazards when planning the locations of new facilities and preclude the uneconomic, hazardous, or unnecessary use of flood plains in connection with such facilities. With respect to existing federally owned properties, federal agencies were required to delineate conspicuously past and probable flood heights to assist in creating public awareness of flood hazards. The Executive Order also required flood-proofing measures, when practical and economically feasible.

Federal agencies responsible for the administration of federal grant, loan, or mortgage insurance programs involving construction of buildings, structures, roads, and other facilities, were required to minimize the exposure of such facilities to flood damage, reduce the need for future federal expenditures for flood protection and disaster relief, and preclude the uneconomic, hazardous, or unnecessary use of flood plains.

In addition, Executive agencies responsible for disposing of federal lands or properties were required to evaluate flood hazards and attach appropriate restrictions with respect to the uses of such lands or properties by the purchaser and his successors.

Finally, all Executive agencies responsible for programs which entailed land-use planning were required to take flood hazards into account when evaluating plans, and to encourage land-use appropriate to the degree of hazard involved.

The Bureau of the Budget in 1968 asked the Water Resources Council to help develop guidelines for federal agencies in implementing the Executive Order. In September of 1969 the Council issued "Proposed Flood Hazard Guidelines for the Federal Executive Agencies," for experimental use and review by the federal agencies, with a request to report the results of the review to the Council by April 1, 1970. The Council then undertook a revision of the guidelines. A revised draft has been completed but as of May 1972 had not yet been issued by the Council.

b. A Uniform Technique for Determining Flood Flow Frequencies

The Task Force on Federal Flood Control Policy in its second recommendation had called for the establishment of a panel to examine methods of frequency analysis and to provide a set of techniques based on the best-known hydrological and statistical procedures. The Bureau of the Budget had requested the Council to undertake this activity, which it did on September 10, 1966, through its Hydrology Committee. The Hydrology Committee reported on October 20, 1967, and in December 1967 the Water Resources Council published Bulletin No. 15 entitled "A Uniform Technique for Determining Flood Flow Frequencies."

c. A Unified National Program for Flood Plain Management

Passage of the National Flood Insurance Act of 1968[312/] encouraged the regulation of flood hazard areas. Under the Act, the Secretary of the Department of Housing and Urban Development is authorized to establish and carry out a national flood insurance program to enable persons to purchase insurance against losses resulting from physical damage to or a loss of real or personal property arising from any flood occurring in the United States. Section 1302(c) of the Act called for the President to submit to Congress his plan for such a unified national program for flood plain management, including proposals for cost-sharing among beneficiaries of flood protection, within two years after implementation of the flood insurance program. The Deputy Director of the Bureau of the Budget in October of 1968 asked the Water Resources Council to undertake this task for the President.

The Council initiated a study to formulate such national unified flood control policy which would pay more attention to nonstructural flood control measures than had been done in the past and would develop realistic federal and non-federal cost-sharing policies. But three years later the Council had not yet reached agreement on such a policy. In June of 1971 the Director of the Office of Management and Budget wrote to the Chairman of the Water Resources Council reminding him that the Council was already six months overdue in developing this unified national program. Finally, on August 12, 1971, the Chairman of the Water Resources Council, Rogers C. B. Morton, in a letter addressed to each Council member, requested the temporary assignment to the Council of one full-time professional employee well versed in flood problems to spend two to three days per week formulating a national flood control policy. The group met for the first time on September 14, 1971. In May of 1972 the Council released a draft of the policy statement.

d. Federal Stimulation of State and Local Flood Plain Regulations

As a result of the Task Force report in 1966, Executive Order 11296, and the Flood Insurance Act of 1968, and because of the pressing need for informational materials so that effective flood plain regulation programs might be adopted throughout the United States, the Water Resources Council in 1968, together with five other federal agencies and the University of Wisconsin, as a joint effort, initiated a study of state and local regulation of the use and occupancy of land in flood plains. Many of the federal agencies had been studying the subject for years and assembling legal materials, but their studies had never been brought to fruition. The purpose of the Council's study was to assemble and summarize existing state statutes and city and county ordinances which regulated the use and occupancy of land in flood plains, and then, on the basis of that information and an examination of the case law, to draft a model state enabling act to authorize cities, counties, and other units of local government to adopt ordinances regulating such use and occupancy. Model ordinances for both urban and rural lands also were to be drafted. In February 1970 a draft of the study was published by the Council. It was released "For Comment Only" and distributed to all states and many local communities for study. The final report was published in December 1971 and released by the Council.[313]

A companion volume on coastal flood hazard regulations was also undertaken by the Council, and this volume has been released in draft form for comment.

The adoption of these statutes and ordinances by states and localities may be of immense significance in reducing damages from flooding in the United States and at the same time eliminating the need for more costly flood protection structures.

9. Compacts

About thirty interstate compacts deal with water problems.

Some 15 additional compacts dealing with water problems are in various stages of negotiation. Many of these compacts deal solely with allocation of interstate waters between various states, but others are of vast dimension and cover the planning, development, and management of water resources for an entire river basin.

From its inception, the Water Resources Council has been involved with water compacts in one form or another. The problems faced by the Council fall into two categories. The first category involves the proper role of the Council in the negotiation and the administration of compacts involving water resources. The second category, related to the first, involves the role of the Council in coordinating a federal position on federal-interstate compacts.

a. Coordinating Federal Participation in Compact Negotiation and Administration

In 1961 Congress consented to and became a signatory party to the Delaware River Basin Compact.[314/] That Compact established a compact river basin commission for the entire Delaware River Basin and gave that commission broad powers for the planning, development, and management of the water resources of that basin. The Compact was the first one in the history of the United States in which the United States was a signatory party. Because the United States was represented on the Compact commission and had voting rights, and because the vote of the commission could influence federal programs and policies, Congress in consenting to the Compact set forth a number of reservations upon which its consent was conditioned.

Under the provisions of the Compact, the federal government, through its representative, had a right to non-concur in any decision of the Compact commission which involved the commission's comprehensive plan. Sometime in 1968 an issue arose before the commission as to whether a pumped storage project, to be built on Tocks Island in the Delaware River, should be made a part of the comprehensive plan The federal member to that Compact commission, who was the Secretary of the Interior and the Chairman of the Water Resources Council, sought guidance from the Council as to whether he should non-concur in the vote of the state commission members who approved placing the Tocks Island project in the comprehensive plan. The Council considered the issue and after much soul-searching developed a federal position to non-concur in the vote of the commission. The reason given was that the plan for the Tocks Island project at that stage was so vague that it was impossible at that time to foresee whether it would impinge upon federal interests in the basin, and that, therefore, the federal member was filing a notice of non-concurrence, although he indicated that when the plans finally became more specific the federal government might then agree to have them placed in the comprehensive plan. The federal government feared that if it failed to file a notice of non-concurrence, under the terms of the Compact it might not thereafter have an option to object to the project later, and it wanted to preserve its option.[315/]

The incident was significant, not only to the members of the Delaware River Basin Commission, but also to the federal members of the Water Resources Council because it highlighted what had been a gnawing and growing concern of the members: There was no one or no entity in the federal government developing a unified federal position on issues arising in the negotiation of compacts or in their administration. It was true that the then Bureau of the Budget had one person who kept some contact with the various federal negotiators or federal persons sitting in on various compact commissions. But the Bureau did not in any comprehensive way keep in touch with the various federal agencies that had or might have had interests in the results of the negotiations or in the activities of various compact commissions.

The Council therefore drafted and sent to the Bureau of the Budget a proposed Executive Order[316] which would have assigned these responsibilities to the Council, but the Bureau disapproved. While it was willing to give the Council certain responsibilities where interstate water compacts were concerned, it refused to give up its activities in the field of federal-interstate compacts. With the election in November of 1968 and the change of Administration shortly thereafter, the matter was not pushed by the Council, although it is still a matter which the Director wants to have taken up again.

Under the proposed Executive Order, the Council would have maintained and distributed information of interest to the federal government with respect to water compacts, assisted states upon request in connection with negotiation and drafting of water compacts, and assisted the federal negotiators in obtaining information and support from the other federal agencies in resolving issues that might arise in the course of the negotiations. The Council would also have submitted to the President its recommendations on any water compact presented to Congress for approval. The Executive Order would have required federal representatives to compact commissions to obtain and be guided by the views of the Council on issues of substance arising in the administration of a water compact before acting on the issues.

The proposed Executive Order was motivated not only by the experience the Council had with the Delaware River Basin Commission but also because of a number of other federal-interstate compacts being proposed at that time (1968) for the Potomac, the Susquehanna, and the Hudson River Basins. The Council felt that the matter of obtaining a unified federal position was particularly acute in the area of the federal-interstate compact, where federal interests might be so deeply affected by actions taken by any such federal-interstate compact commission.

In addition to the federal-interstate compacts, there were compacts in which the President appointed one or more representatives. In two of these--the Potomac and the Ohio Sanitation Compacts--the federal representatives were full-fledged voting members; in one, the federal representative voted only in case of disagreement; in others, the federal representatives were non-voting members. There were also other compacts in which federal members or participants were appointed by named federal agencies. In some, they voted in case of disagreement and in others they did not vote. In a number of compacts there were references to cooperation or collaboration of named federal agencies.

b. Developing a Federal Position on the Susquehanna River Basin Compact

In February 1969 various bills were introduced in Congress to give consent to the compact between the states of New York, Pennsylvania, and Maryland for the Susquehanna River Basin.317/ The compact was modeled on the Delaware River Basin Compact and called for the United States to become a signatory party. There were major issues raised by the Susquehanna compact concerning federal powers and federal responsibilities under acts of Congress. The compact also raised issues concerning the need for a coordinated federal position to guide the vote of the federal member, issues involving the proposed exercise of concurrent powers by the compact commission and certain federal agencies, and issues involving hydroelectric power preferences and priorities. The Council succeeded in harmonizing the various agency views and developed a set of reservations which were ultimately enacted by the Congress in consenting to the Susquehanna River Basin Compact in 1970.318/

The Council has always recognized that there were some areas in the country where institutions other than river basin commissions established under Title II of the Water Resources Planning Act might be appropriate. While it has not opposed the federal-interstate compacts as a device in appropriate instances, the federal-interstate compacts do pose problems involving the relationship of the planning for water resources in the basins covered by the compacts to other planning being done under the auspices of the Water Resources Council. Neither the Delaware River Basin Commission nor the Susquehanna River Basin Commission is required to submit its plans to the Council for review and comment, and it is not clear just what the role of the Water Resources Council is to be when projects are proposed in Congress for these various river basins covered by federal-interstate compacts. The problem may become more complicated because additional federal-interstate compacts, modeled on those for the Delaware and the Susquehanna, are now being proposed for the Hudson and the Potomac River Basins.[319/]

10. Cost-Sharing

The Council has been involved continuously in various cost-sharing studies. A recent study, "State and Local Capability to Share Financial Responsibility of Water Development with the Federal Government," was published in September of 1971. However, the Council has yet to establish any cost-sharing policies.

Soon after the COR was created, it asked its Policy Development Committee to recommend needed changes in cost-sharing policy. In one report its Committee restated the objectives of cost-sharing (including national efficiency, equitable treatment, relating costs to special benefits, and encouraging regional development). The report emphasized the fundamental objective of introducing more rationality into citizen demands for federal water expenditures. The report on objectives was sent by a unanimous committee to the COR, which studied it for a long time and eventually returned it to the Committee with instructions to reexamine the report in light of the views of the new Administration.

In the meantime, the Policy Development Committee prepared detailed recommendations for major changes in cost-sharing policies for Water Quality Improvement and for Flood Protection. These reports were laboriously hammered out by the Committee over a period of four years, considered on several occasions by the COR, considered in their preliminary fashion by the Council members, returned to the Committee for "testing" the recommendations through recomputing selected feasibility reports, and finally returned again to the Committee for further study.

The Policy Development Committee has initiated studies of cost-sharing under the Federal Water Project Recreation Act[320] and for "Streamflow Regulation." The Committee also plans to study cost-sharing policies under the remaining federal water statutes, but the question remains whether any significant cost-sharing policies will be cleared through COR or the Council.

The Bureau of the Budget, seeking to spur action, recommended a specific cost-sharing change for water quality improvement, and the Secretary of Interior later adopted for his department a policy similar to that recommendation, so far as existing law permitted him to do so. The Policy Committee refined their recommendation and supported it before COR, but nothing has been forthcoming.

Increased state and local cost-sharing is likely to reduce the number of projects that win state and local support and that can be recommended to Congress as ready for authorization. It is unlikely that the agencies which are members of the COR want to develop any cost-sharing policy which will have this effect. At an executive session of the Council of Members in December 1971, cost-sharing was on the agenda, but the issue was apparently delayed once again.

11. International Activities

The Water Resources Council has been involved to some extent in international activities. Shortly after the Council was created it sent a representative to the Organization of Economic Cooperation and Development. At times it has been requested by certain international organizations to comment on certain reports of international organizations. For example, in March 1969 it considered whether or not to comment on a scientific study of soil drainage which had been done under the auspices of UNESCO. In August 1966 it had to work out appropriate relationships between the New England River Basins Commission and the International Joint Commission which were to be stated in the Executive Order setting up the New England River Basins Commission. It has also helped the Souris-Red-Rainy River Basins Commission in some of its problems with the Canadians along the common border.[321/]

Mr. Christian A. Herter, Jr., the Special Assistant to the Secretary of State, requested the Water Resources Council to coordinate the input of the United States into the Water Problems Committee for the Economic Commission for Europe (ECE) and the Water Management Research Group of the Organization for Economic Cooperation and Development (OECD). An advisory committee was appointed by the Council for these purposes. The committee permits all of the member agencies of the Council to be aware of the international interests in water resources planning and to help provide a forum for assisting in resolving international problems.

In July 1970 the Department of State and the Water Resources Council were hosts to the United States' portion of the North American meeting of OECD. The Council assisted in arranging for case studies expressing the approach of the United States to a series of water resources management problems that had international significance. The Canadians arranged for a similar participation for the Canadian portion of this meeting. The OECD is publishing the case study presentations in one volume with a view toward worldwide distribution.[322]

The Council has also become involved in international activities with the Canadians through the Great Lakes River Basins Commission because of pollution problems in the Great Lakes. Frederick O. Rouse, the Chairman of the Great Lakes Basin Commission, has served as a member of the Canada-U.S. joint working group on Great Lakes pollution. Because of the international implications of what the Great Lakes Basin is doing, the State Department requested and received membership on the Commission.[323]

12. The National Water Commission

The Act establishing the National Water Commission[324] provides for review and comments by the Water Resources Council of the various reports of the National Water Commission. The Directors and the senior staff members of the National Water Commission and the Water Resources Council have been meeting on a regular and periodic basis to discuss interrelationships of the respective programs of the Commission and the Council. In the fall of 1970, the Director of the Council also met with the Commission members. The Council has commented on three Interim Reports covering the Commission's activities. Interim Report No. 2 provided information on the scope up to 22 study areas which were being explored by the Commission. The

Council expressed its views particularly with regard to the Commission's approach to interbasin transfers to provide supplemental water supplies to water-short areas. The Council noted that the series of forecast procedures being developed by the Commission with regard to economic and population projections may be useful to the Council in preparing its future National Assessments. The Council has also commented on particular study reports prepared for the National Water Commission.[325]

E. Authorizations and Appropriations

The original authorization of appropriations in the Act establishing the Water Resources Council contained the following language:

> SEC. 401. There are authorized to be appropriated not to exceed $300,000 annually, to carry out the provisions of title I of this Act, not to exceed $6,000,000 annually to carry out the provisions of title II, and not to exceed $400,000 annually for the administration of title III: Provided, That, with respect to title II, not more than $750,000 annually shall be available for any single river basin commission.[326]

That authorization was changed in 1968 so that $500,000 rather than $300,000 was authorized to carry out the provisions of title I of the Act.

Finally, on June 17, 1971, Congress amended Section 401 to read as follows:

> "SEC. 401. There are authorized to be appropriated -- (a) not to exceed $6,000,000 annually for the Federal share of the expenses of administration and operation

> of river basin commissions, including salaries and expenses of the chairmen: Provided, That not more than $750,000 annually shall be available under this section for any single river basin commission; and
>
> (b) not to exceed $1.5 million annually for the expenses of the Water Resources Council in administering this Act."[327]

The reasons for the change in 1971 were to provide flexibility. The Council wanted a single authorization for its administration of the Act, to replace the two separate authorization ceilings for the administration of Titles I and III; the prior categorization of the Council's administrative budget had proved to be artificial and impractical. The Council also wanted to provide explicitly that the salaries and expenses of the river basin commission chairmen were the subject of the Title II ceilings.[328]

Appropriations to the Council for its grant-in-aid program under Title III were as follows: for FY 1967, $1,875,000; FY 1968, $2,470,000; FY 1969, $2,602,500; FY 1970, $2,375,000; FY 1971, $3,600,000; and FY 1972, $3,600,000.

Through FY 1970 the maximum amount permitted to be paid by the Water Resources Council, for the share of the expenses of a river basin commission to be borne by the federal government pursuant to Title II of the Act, was not to exceed $200,000 annually for recurring operating expenses. In FY 1971 that amount was raised to $250,000. The total amounts allowed to cover river basin expenses have naturally increased as the number of river basin commissions have increased. Thus the maximum amount allowed in FY 1970 for river basin commission expenses was $755,000. For FY 1972, the maximum amount allowed for all river basin commission expenses was $979,000. The increase in part was to cover the federal share of the expenses of the newly created Ohio River Basin Commission.

The amount of money appropriated to the Council for carrying out the provisions of Title I and for administering the provisions of Titles II (river basin commissions), III (grants to states), and IV (miscellaneous) rose substantially in FY 1972. For FY 1971 the amount was $725,000 and in FY 1972 the amount was $1,381,000. The increased amount reflects the expansion of the staff which has taken place under the new Director, W. Don Maughan.[329/]

F. A Land and Water Resources Council

On January 29, 1970, Senator Henry Jackson introduced S. 3354. That bill would have amended the Water Resources Planning Act to provide for a national land use policy. The bill was co-sponsored by 18 other senators. Identical bills were introduced into the House of Representatives.[330/] Hearings on S. 3354 were held before the Committee on Interior and Insular Affairs in the Senate on March 24, April 28, April 29, and July 8, 1970. As a result of those hearings the bill was amended and the Committee recommended that the bill, as amended, pass the Senate.[331/]

As reported by the Senate Committee, S. 3354 would amend the Water Resources Planning Act to provide for development of a national land use policy, to establish a grant program to assist the states in formulating and implementing comprehensive statewide land use plans and in improving federal land use practices. It would change the Water Resources Council into an enlarged and strengthened Land and Water Resources Council and assign it comprehensive authority for administration of the national land use policy and program set forth in S. 3354. The bill would also establish under the Council's jurisdiction (1) a Federal Planning Information Center as a clearing house for federal projects involving land use implications, and (2) a general data bank for land use planning and management information.

The bill would authorize the Land and Water Resources Council to make grants to state agencies to engage in comprehensive statewide land use planning. Grants to interstate agencies are also authorized by the bill.

The Council would be authorized to fund state land use planning to the extent of 90 percent of planning costs during the first 5 years of the program, and two-thirds of the planning and operating costs after that. Appropriations of up to 100 million dollars per year are authorized for state and interstate agency grants, and 16 million dollars per year would be authorized for administration, including contract sutides. The Water Resources Planning Act as presently constituted would be repealed and a new bill would be substituted therefore.[332]

The report of the Committee sets forth the reasons why the Water Resources Planning Act of 1965 was choosen as the vehicle for the new legislation. First, the Committee recognized the mutual interaction and impact of land and water resources on each other which suggested that they be treated together. Second, it noted that the Water Resources Planning Act is administered by an interdepartmental council. Because of the impact that a national land use policy would have on the activities of the various departments and agencies of the federal government, the Committee thought it desirable that it be administered by such a body. Third, the Committee thought that an apparatus for regional planning, which could supplement state land use planning, was needed since land use problems and patterns often do not follow political boundaries. It argued that the river basin commissions which had already been established under the Act along with the interagency bodies acting in the capacity of river basin commissions in the other major basins, by bringing together federal and state officials in a comprehensive cooperative planning effort, would provide an excellent nucleus for such a regional land use planning apparatus.[333/]

S. 3354 died at the end of the 91st Congress but was reintroduced by Senator Jackson as S. 632 in the 92nd Congress, 1st session, in identical language. During the course of the 92nd Congress a number of other bills pertaining to land use planning were also introduced both in the House and in the Senate.[334/]

In addition to S. 632, Senator Jackson, by request, introduced another bill, S. 992, for the Administration. The bill would provide a system of grants for land use planning to the states to be administered by the Secretary of the Interior, rather than by the Water Resources Council.

A Committee Print dated September 22, 1971, being considered by the Committee on Interior and Insular Affairs, would similarly eliminate the Council as the mechanism for land use planning and instead would use the Secretary of Interior to make grants to assist the states to prepare and implement statewide land use plans, to establish a national land use policy, to establish land resources commissions throughout the United States to encourage compatability among statewide plans, and to coordinate federal programs and policies which have a land use impact. Under the bill being considered by the Committee on Interior and Insular Affairs, river basin commissions could be such land resources commissions, but they would not necessarily have to be.

It is still too early to tell what form, if any, a national land use planning bill will take, and whether the Water Resources Council will become the key entity for developing land use policy and plans. The implications for the Water Resources Council are profound if it in fact becomes the designated agency to administer the land use planning program. It would seem that whether the program would be administered by it or the Department of Interior or some other entity might hinge upon whether or not the Administration is able to establish a Department of Natural Resources under its proposed reorganization plan. If such a department were to be established then many of the functions of the Water Resources Council and the land use policy program for the United States probably would be placed in that department.

G. Water Pollution Planning

In addition to the possibility of the Water Resources Council receiving land use planning powers under legislation pending in the Congress, there is also legislation pending under which the Water Resources Council would be instructed to prepare plans for waste treatment management for all basins in the United States, and to complete the plans not later than January 1, 1980. Two hundred million dollars are authorized to be appropriated under the pending legislation for such planning.[335]

H. A Department of Natural Resources

Recent proposals to reorganize the Executive Branch of the government and establish a Department of Natural Resources would have a profound effect on the future of the Water Resources Council.

On May 12, 1970, the President's Advisory Council on Executive Organization (the Ash Council) submitted a memorandum to the President of the United States regarding the establishment of a Department of Natural Resources.[336]

In evaluating the Water Resources Council, the Ash Council stated that, "While the Council has made progress, we are unconvinced that policy development and direction of federal water resources programs can be accomplished effectively by an interagency entity."[337/] The Ash Council recommended that the water planning and project evaluation functions be transferred from the Corps of Engineers, the Soil Conservation Service of the Department of Agriculture, and the Bureau of Reclamation of the Department of Interior to a new Secretary of the Department of Natural Resources. The report further stated:

> "The Secretary of the DNR should be responsible for evaluating water resource projects for economic and other benefits, and for making decisions as to which projects should be recommended for implementation. Federal agencies with interest in water resource development would participate in an advisory group working with the Secretary of the DNR. The Corps of Engineers, the Soil Conservation Service, and the Bureau of Reclamation would retain responsibility for project cost estimating, engineering, construction, and maintenance...
>
> "Finally, the Secretary of the Department of Natural Resources would absorb the statutory powers of the Water Resources Council, including the comprehensive river basin planning and the administration of planning grants to the states. With these consolidations, all of the significant policy planning and project evaluation activities associated with water resource projects will be placed in the hands of a single Cabinet officer. This will make it possible for him to shape water resources programs to meet more effectively the needs of our Nation in the decades ahead."[338/]

* * * *

> "Under the proposed reorganization, the functions of the Council would be vested in the Secretary of the DNR with the Council members serving as an advisory board. The Council's functions would be carried out by the Secretary working through the officer appointed to head the Water Resources component of the DNR."[339]

In addition to placing civil functions of the Corps of Engineers, the watershed development functions of the Soil Conservation Service, and the functions of the Bureau of Reclamation into a Water Resources component of the Department of Natural Resources, the Ash Council recommended that the Office of Saline Water and the Office of Water Resources Research in the Department of Interior be transferred to that component of the DNR.

The Ash Council also recommended that certain other water-related functions of agencies in the federal government be transferred to the proposed DNR although these agencies would not be under the Water Resources component. Thus the Geological Survey and the various power administrations of the Department of Interior (Bonneville, Southeastern, Southwestern, and Alaska) would be transferred to an Energy and Mineral Resources component of the proposed DNR. The Bureau of Commercial Fisheries, the Office of Sea Grant Programs, the Marine Mining Program of the Bureau of Mines of the Department of Interior; the U.S. Lake Survey of the Department of the Army; the National Oceanographic Data and Instrumentation Centers of the Navy; and the Coast Guard Data Buoy Program of the Department of Transportation would be transferred to a Marine Resources and Technology component of the proposed DNR. Alternatively, it was proposed that a Geophysical Science Services Administration might be set up in the DNR which would embrace the Geological Survey, the U.S. Lake Survey, the National Oceanographic Data Instrumentation Centers, the Coast Guard Data Buoy Program, and the Environmental Science Services Administration of the Department of Commerce (which embraces the Weather Bureau, the Coast and Geodetic Survey, the Environmental Data Service, and the National Environmental Satellite Center).

The recommendations of the Ash Council formed the basis for many of the proposals of the President for the reorganization of the Executive Branch of the government.[340/] The Ash Council report on the Department of Natural Resources formed the basis for S. 1431, the Administration bill which was introduced by Senator Percy on April 1, 1971, to establish a new Department of Natural Resources.[341/]

S. 1431 would establish five administrations within a Department of Natural Resources: Land and Recreation Resources; Water Resources; Energy and Mineral Resources; Oceanic, Atmospheric, and Earth Sciences; and Indian and Territorial Affairs. Many of the agencies in the present federal establishment dealing with water and related land resources would be placed in one or another of these various administrations; however, a number of federal agencies dealing with water and related land resources would not be made a part of the Department of Natural Resources.

The following entities would be transferred to the Land and Recreation Resources Administration: the Forest Service, the

Natural Resources Economics Division of the Economic Research Service, the Soil and Water Conservation Division of the Agricultural Research Service from the Department of Agriculture, and the Bureau of Land Management from the Department of Interior.

The following organizational entities and programs would be transferred to the Water Resources Administration. From Interior: the Bureau of Reclamation; the Office of Saline Water; the Office of Water Resources Research; and the Power Marketing Agencies. From Army: the civil functions (planning, policy, and funding) of the Corps of Engineers. From Agriculture: the Soil Conservation Service in the Watershed Loans Division of the Farmers Home Administration. From the Water Resources Council: all functions.[342/]

The Oceanic, Atmospheric, and Earth Science Administration would embrace the Geological Survey of the Department of Interior and the National Oceanic and Atmospheric Administration now located in the Department of Commerce.

Hearings were held on S. 1431. Rogers C. B. Morton, the Secretary of Interior and Chairman of the Water Resources Council, testified in support of the bill.[343/] However, many of the agencies that are members of the Water Resources Council are fearful of the new bill, even though the Secretaries, who are members of the Council, have endorsed it publicly. The staff of the Water Resources Council is wary of what its role will be in the new entity if it is ever established.

While the bill states that "All of the functions of the Water Resources Council" are to be transferred to and invested in the Secretary of the new department (section 301(a)), the Council would have to be abolished in its present form, and the Act creating it would have to be greatly modified if not repealed outright. Any legislation which would be passed by the Congress to establish a Department of Natural Resources and absorb the functions of the Water Resources Council would have to spell out in much greater detail than the present proposed S. 1431 just how the Department of Natural Resources was to take over the functions of the Water Resources Council.

While many of the present federal agencies involved in water and related land resources would be absorbed by the proposed Department of Natural Resources, there are numerous other federal agencies in water resources that would not be transferred to the proposed DNR under S. 1431: for example, the Federal Power Commission, the Delaware River Basin Commission, the Susquehanna River Basin Commission, the Tennessee Valley Authority, the Environmental Protection Agency, the Council on Environmental Quality, the Regional Economic Development Commissions, the Appalachia Regional Commission, the water-related activities of the Department of Justice, the flood insurance program of the Department of Housing and Urban Development, the International Joint Commission would remain outside the proposed Department of Natural Resources. While the water agencies within the Department of Natural Resources could be coordinated by an assistant secretary or a similar official, there would still need to be some mechanism to coordinate all the water agencies outside of the proposed department. Thus, the coordinating functions of the present Water Resources Council would have to be carried out in some manner.

It is very difficult to foresee what the effect of a Department of Natural Resources will have upon water resources planning and development in the United States. The assumption of the Ash Council report, the President's message on Executive Reorganization, and S. 1431 is that such a reorganization would be beneficial, but many issues are raised by the proposed reorganization. Would issues and conflicts between various water agencies, for example, the Corps of Engineers and the Bureau of Reclamation, surface as easily and be as visible to the public if both of these entities were in a single department? Is it better for the country to have an airing of differences in public between various agencies or should these differences be resolved within the bureaucracy and perhaps not surface? Is it in the public interest to have overlapping and duplication by various competing agencies rather than having problems resolved within a single department? Would the Secretary of the Department of Natural Resources receive sufficient information and a spectrum of alternatives in order to make informed decisions, or would there be a tendency to suppress information, conflicts, and alternatives by the bureaucratic process as issues were submitted to the Secretary for decision? Would moving the mission-oriented agencies into a single department make them less mission-oriented in a new department? Or is it necessary to split them up and reorganize them around various programs? Is a single decisionmaker for water resources likely to minimize the conflicts within his department? Will the DNR programs be more difficult to implement because "coalition building" among the various constituencies in the water resources industry will be more difficult to attain? Will it be more likely that one outside group will be able to capture the decisionmaking process within the Department of Natural Resources than it would be if there were competition between agencies operating in an interagency arena such as the Water Resources Council? Will the Department of Natural Resources be better able to produce policy resolutions than an interagency council such as the Water Resources Council?

These are not easy questions to answer, but there is a body of opinion that argues that large monolithic departments are not in the public interest, and that decisionmaking in such an entity is less responsive to public needs than if there were competition in the public arena between competing agencies. The appeal of the reorganization program of the Ash Council and the Administration for a Department of Natural Resources seems to be in its paper chart organizational simplicity, but it is very difficult to foresee precisely what the consequences of such a reorganization may be. The Ash Council report talks in terms of "centralize," "consolidate," "efficiency," "rational," "coordinate," "integrate," but all of these are vague terms telling us nothing of the practical effect of such a proposed reorganization.

V. EVALUATION

A. The Assumptions Underlying the Water Resources Planning Act

Our survey of the historical background of the Act and its implementation indicates that there were a number of assumptions about water resources planning and development underlying the Act. Some of those assumptions may no longer be valid. The Water Resources Planning Act and its implementation may therefore have to be modified accordingly.

1. The assumption that beneficial influence of water programs extends beyond the direct effects of using water and water services is probably still true today, but better methodology and analysis may show us that the beneficial indirect effects are not as widespread as we used to think and in many instances are offset by adverse secondary effects. As a means of stimulating regional economic growth, the emphasis on water resources is declining. We no longer think of water programs as controlling monopolies. Water programs, however, still influence income distribution and patterns of land use in urban areas.[344/]

2. The assumption that federal leadership in water planning and major federal investments in water resource programs are essential to an adequate national water resources program is an assumption undergoing some change. Many persons today seem to feel that the federal role, though important, should be de-emphasized and a more important role taken by state, local, and regional entities and private groups. The hitherto dominant role of the federal government, it is argued, has led to the planning and construction of unnecessary and unwanted projects by mission-oriented agencies. The recent proposals for the sharing of federal revenues with the states are indications of this trend.

3. Experience since passage of the Water Resources Planning Act has borne out the assumptions that there are rapidly expanding demands for water throughout the nation, and that to meet these demands, the conservation, development, and utilization of water and related land resources should be done on a comprehensive and coordinated basis by the federal government, the states, localities, and private enterprise with the cooperation of all those persons and entities affected and concerned.[345/]

4. The hydrologic unit (a river basin or a group of river basins) is no longer thought to be necessarily the appropriate unit upon which to plan and develop water resources. The linkages and interdependencies between water planning and other sectors (for example, metropolitan planning) are becoming increasingly

important.[346/] The Policy Statement for Water and Related Land Resources Planning issued by the Water Resources Council on July 22, 1970, explicitly recognizes that the appropriate water planning unit may not be the river basin.

5. The assumption that the planning and management of water resources should be comprehensive and multi-purpose is still valid, if not more so. Indeed, it is recognized that the planning and management of the water resource must be done in the wider context of the planning and management of other sectors of the economy.

6. The assumption that planning for water resources should be done on a long-range basis in the light of future supply and demand prospects is still valid.

7. There has been a change in the idea that the planning process should produce a "best" plan, which will be updated. The emphasis today is changing to one of producing alternative programs, reflecting varying value preferences, for public consideration and then allowing the decisions to be made through the political process. "The reports of the Committee on Water of the National Academy of Science, as well as the views of Federal personnel in responsible posts, led to this quite fundamental change in conception of the role of the water planner."[347/] The hard question is whether the Water Resources Council and the various planning entities reporting to it will be able to produce those alternatives.

8. The assumption in the Act that the two-tiered structure of

a cabinet Council and river basin entities will best effectuate the water resources planning and policy making process is open to serious question. The present structure does not allow hard policy issues to be attacked and resolved, and the planning process, still dominated by the federal agencies, is not yet producing a wide range of alternative plans and programs. The review procedure also seems inadequate.

9. The assumption that a cabinet level Council can appraise and coordinate all federal water policies and programs does not appear to be valid.

Assumptions 8 and 9 are discussed in greater detail hereafter.

B. The Limits of Coordination

The term "coordination" is used in a number of places in the Water Resources Planning Act:

> "...it is hereby declared to be the policy of the Congress to encourage the conservation, development, and utilization of water and related land resources of the United States on a comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and others concerned." (Section 2)

> "The Council shall...maintain a continuing study... of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies...." (Section 102)

> "Each [river basin] commission...shall... (1) serve as the principal agency for the coordination of

> Federal, State, interstate, local and nongovernmental plans for the development of water and related land resources....
> (2) prepare and keep up to date...a comprehensive, coordinated, joint plan...." (Section 204)
>
> "The Council shall approve any [state] program for comprehensive water and related land resources planning....if such program...provides for...adequate provision for coordination with all Federal, State, and local agencies and nongovernmental entities.... and provides...for full coordination between comprehensive water resources planning and other statewide planning programs..." (Section 303) [Emphasis supplied in all quotations.]

The Council has been criticized for not carrying out its coordination functions adequately. Yet there is great confusion over what "coordination" means. Coordination is never defined in the Act, and it probably could not be defined adequately. It has been used in so many different ways, by so many different people, in so many different contexts that it has lost any precise meaning. Harold Seidman, an astute student of the dynamics of federal organization, in a revealing chapter discussing coordination and the use of the device of the interagency committee, has called the term a search for the "philosopher's stone which would provide the key to the universe and, in effect, solve all of the problems of mankind."[348/]

What are some of the meanings and uses of the term? At the very least it seems to connote communication so that the various members of an interagency group have an awareness of each other's programs and activities. To the Congress it has often meant, at least in the water resources field, avoiding duplication and not being confronted with conflicting sets of projects for a river basin.[349] To one Congressman it has meant the resolution of interdepartmental disputes,[350] and the failure of the Council to do this has been criticized by certain staff members of both the House and the Senate Interior and Insular Affairs Committees. To some planners coordination involves a bargaining process and a resolution of issues, if possible, through that process. If the process fails to resolve issues, that too can be called coordination. Coordination has been construed as the power to make decisions.[351] President Eisenhower's Advisory Committee on Water Resource Policy saw a lack of coordination in "the fact that the Federal interest in water resource development has been expressed in different laws empowering different agencies to pursue particular programs for different purposes."[352] Some people see coordination as the power to impose authority from the top.[353]

Henry Caulfield, the Council's first Director, once referred to coordination as "building consensus." If government agencies are to work harmoniously, they must share some community of interests about basic goals, and building that community of interest is perhaps what Henry Caulfield meant by "building consensus." Without that community of interest problems are unlikely to be solved by an interagency coordinating mechanism. Without that community of interest, problems also are not likely to be solved by consolidation into superdepartments.

Harold Seidman neatly summed up the problem with an apt illustration:

> "Senator Frank Moss ascribes the conflict between the National Park Service and the Army Corps of Engineers over the Florida Everglades to 'uncoordinated activities.' Park Service officials complained that the Engineers drained the Everglades National Park almost dry in their efforts to halt wet-lands flooding and reclaim glade country for agriculture. The Engineers argued that wet-lands were 'for the birds' and flood control for the people. Coordinating devices may reveal or even exacerbate the conflict, but they cannot produce agreement among the agencies when a choice must be made as to whether a single piece of land should be drained for flood control and reclaimed for agriculture, or maintained as wet-lands to preserve unique and valuable forms of aquatic life."354/

If we apply these varying uses of the term "coordination" to the activities of the Council, we find that many of them are applicable. The Council mechanism does provide a forum for the exchange of information. Duplications of effort and conflicting projects are minimized or eliminated in the planning process. The mechanism does allow bargaining to take place both at the river basin level and at the Council level, although not all of the entities that should be participating in the bargaining process are at the table, particularly private groups, representing business and environment interests, and local government entities. But coordination has not meant the resolution of interdepartmental disputes; it has not meant an examination of conflicting laws, programs, and policies of the member agencies; it has not meant the imposition of a decision by some higher authority--the present Council mechanism cannot achieve coordination in those senses of the term.

C. The Mandates of the Act

The Council should be evaluated against the duties imposed upon it by the Water Resources Planning Act.

Five statutory duties are explicitly given to the Council to help achieve the goal of developing river basin plans for the major river basins throughout the nation: (1) preparing the national assessment; (2) developing principles, standards, and procedures; (3) establishing river basin commissions; (4) making grants to states for water planning; and (5) encouraging and reviewing river basin plans. The Council has fulfilled these mandates fairly well.

A first national assessment was prepared in 1968. The assessment effort would have been continued earlier and improved except for budgetary constraints. The Council staff is now gearing up for the continuing assessment effort. A report is scheduled for 1975. Guiding, supervising, and coordinating such an assessment, involving hundreds of people and dozens of federal and state agencies, seems to be a task particularly suited to an interagency groups such as the Council.

Principles and standards have been developed, although the task has taken the Council a long time. They are not yet in final form, and it is too early to predict their impact on the planning process. But they appear to be an important step in ensuring that all effects of plans and projects, beneficial and adverse, monetary and non-monetary, are displayed for decisionmakers. Procedures for implementing the principles and standards have not yet been developed. They are the logical next step, and the Council's Policy Development Committee has undertaken this task.

The Planning Act encourages but does not require the Council to establish river basin commissions throughout the United States. This function was given a top priority by the Council. By March of 1972, seven river basin commissions had been established covering thirty-two states with over one-half the population of the United States. The Council has amply fulfilled its duty to encourage the establishment of river basin commissions.

The Act requires the Council to make financial grants to states over a period of ten years for water planning. The Act also requires the Council to prescribe rules, procedures, and arrangements to assure that the use of the Title III funds by the states is coordinated with related federal planning assistance programs.

The grant program under Title III has been carried out by the Council to the limit of the Congressional appropriations. State water planning has been augmented, the number of technically qualified people in state water planning has increased substantially, and state water programs are farther ahead than they would have been without the grants. Nevertheless, improvements in state water planning probably would have been greater if more federal grant money would have been available. The states are not partners in federal-state planning efforts; the federal agencies still dominate the planning process. If the states are to become partners, more of the federal planning money will have to be given to them.

The coordination of the Title III grant program with the planning assistance programs of other federal agencies has not been done very well by the Council. The attempt to develop a consolidated grant application procedure is a beginning. Part of the problem lies in the resistance of the federal agencies, administering planning assistance programs to states, to domination by the Council, but the failure of the Council staff and the COR in the past to give this function high priority is probably a more important reason.

In addition to requiring coordination of the Title III grant program with the planning assistance programs of other federal agencies, the Act requires that a state, as a condition of receiving a Title III grant, have a comprehensive water and related land resource planning program which provides for coordination with all federal, state, local agencies, and nongovernmental entities having responsibilities in affected fields and for coordination between state comprehensive water resource planning and other statewide planning programs. The Council has done very little to determine how well this condition is being met by the states, nor has the Council helped the states meet this condition. The small size of the Council's staff and the greater importance given to other programs are probably the basic reasons why the Council has not done more in this area.

Implicit in the Water Resources Planning Act and explicit in the legislative history is the idea that the Council would help develop plans for the major river basins throughout the nation. Section 104 of the Act requires the Council to review the plans submitted by river basin commissions, comment on them, and forward them to the President. With the transfer of the functions of ICWR to the Council by Presidential directive, the Council also performs the same functions for the plans submitted by ad hoc and interagency committees.

While the goal of the Senate Select Committee and President Kennedy to have comprehensive plans for all of the major river basins completed by 1970 has not been achieved, the lag has been largely due to budgetary restrictions. Nevertheless the program has advanced so that by FY 1972 one framework study has been completed and twelve are in progress with eight of these to be completed in FY 1972. Seven are still to be initiated. Of the feasibility studies, eight have been completed and nine are in progress. A number of these studies have already been reviewed by the Council, comments have been made, and the studies forwarded to the President.

There is no doubt that the quality of the plans can be improved, and the Council is continuously seeking new ways to improve them. Council review of plans has frequently caused the plans to be revised to give greater consideration to the environmental impacts and nonstructural alternatives. In one plan the number of reservoirs proposed originally was cut from 10 to 3 after Council review. The National Assessment and the OBERS economic projections are being refined; new proposed principles and standards have been issued; a new planning policy has been adopted seeking to upgrade federal, state, and local coordination and cooperation, and seeking to strengthen study management by placing responsibility in a single individual rather than a committee--an attempt to do away with the lead agency concept and get Council input into the planning effort in its early stages; the National Assessment and the planning efforts are being integrated; policy statements and guidelines have been issued with regard to environmental statements, revision of plans, priorities reports, wild and scenic rivers, and coordination; seminars have been held on the planning process and on ways of involving the public; the Council organization has been revised under the second director in order to improve communications between federal, state, local, and private groups; a state advisory committee has been created to obtain more state input on policy issues; the state grant program is now being integrated with the planning program; river basin commission chairmen are now observers to the Council; new agencies, such as CEQ and EPA, have been added to the Council's roster of associate members or observers in order that new interests would be represented.

But a number of difficulties in the planning process supervised by the Council have not been solved.

First, there is still a tendency for plans to be stapled layers of projects desired by the development agencies. Alternatives, including nonstructural solutions, are not thoroughly explored and set forth. There is still too much duplication of effort, a gathering of too much unrelated basic data, and a tendency to attack the easy problems.

Second, the alternatives that are set forth are not necessarily the most efficient in terms of national income.

Third, the plans that are developed tend to be those of one or more of the dominant federal agencies, because they generally have the staff and the funds to develop the plans. The plans therefore reflect their biases. An attempt by the Council to solve this problem through central funding of studies has been rejected by OMB.

Fourth, funding of studies has often been sporadic so planning staffs cannot be maintained at a consistent level. Funds appropriated to agencies for planning are often not used for planning. And sometimes funds may be appropriated, but OMB has not allowed a sufficient number of staff positions to do the planning job.

Fifth, water resources plans sponsored by the Council are not adequately related to water plans being done by other agencies, such as pollution plans for river basins, and to plans in other sectors, such as urban and transportation planning, although the Act gives the Council the power to coordinate its planning with these other plans. If the Council were given land use planning powers in addition to its present powers, as proposed in some bills pending in Congress, these powers would help alleviate the problems.

Sixth, the planning agencies in general are not equipped with adequate and sufficiently trained manpower to do the complex water planning job required today.

Seventh, ways have not been found to adequately involve the public and the private sectors in the water planning process, although the Water Resources Planning Act specifically requires that to be done.

Eighth, environmental and conservation interests have not been brought into the water planning process in a constructive role.

Ninth, the Westwide Study by the Bureau of Reclamation, covering the eleven Western states, confused the planning efforts in that large region of the country, despite the statements in the Colorado River Basin Project Act that the study is to be coordinated with the other planning activities being conducted under the Water Resources Planning Act.

One major goal of the Act is the development of river basin plans. Another important goal is to ensure that federal water policies and programs, river basin plans, and coordinating mechanisms are adequate to meet requirements throughtout the nation. To fulfill this second goal, Section 102(b) of the Water Resources

Planning Act imposes a series of imposing duties on the Council. The section reads as follows:

> "The Council shall - - -
>
> (b) maintain a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation and of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies; it shall appraise the adequacy of existing and proposed policies and programs to meet such requirements; and it shall make recommendations to the President with respect to Federal policies and programs."*

Generally, these duties have not been carried out by the Council, although there are a few bright spots.

The Council did appraise the adequacy of the administrative and statutory means for coordinating federal participation in interstate water compact negotiation and administration, and the Council worked out a proposed solution, but the Bureau of the Budget did not forward the proposed executive order to the President. The Council also took a close look at the federal interstate compact for the Susquehanna River Basin when it was proposed, and it coordinated and developed a federal position on that compact which culminated in a series of reservations which were adopted by the Congress.

In the area of flood hazards the Council reviewed federal agency activities with regard to the flood hazard and issued proposed flood hazard guidelines for the federal executive agencies. It also reviewed various policies and programs of states and localities with regard to the flood hazard, and published model state statutes and ordinances, together with other legal materials, to stimulate flood plain regulation by states and localities. But it still has not been able to develop a unified national program of flood plain management, even though it has been repeatedly requested to do so by OMB and it has known that the President is under a statutory request to have developed such a program by the end of 1970.

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* 42 U.S.C.A. 1962a-1(b).

In other areas the record is more mixed. The Council has dabbled in the problems, policies, and programs of the coastal zones and estuaries, and also has become involved in designations of wild and scenic rivers. In the past, but no longer, the Council regularly commented on a number of bills referred to it for comment by the Bureau of the Budget or Congress--bills involving, for example, pollution, scenic rivers, sewage treatment plants, the Council on Environmental Quality, nuclear energy, debris removal, the Marine Council, and various compacts--and to that extent it was considering policies and programs of the federal agencies. It released a study of alternative institutional arrangements for river basins, and made various other technical studies. It has taken an interest in the water research activities of the federal government and has sent representatives to some international meetings concerning water resources.

But on several occasions when the staff has attempted to tackle tough issues involving policies and programs, the COR or the members have shied away. The failure to resolve any cost-sharing issues is a prime example. Taking a year to raise the discount rate is another example. The Council's delay in working up a unified national program for flood plain regulation is still another example. When President Kennedy established his ad hoc Water Resources Council in 1961 pending passage of the Water Resources Planning Act, he asked it specifically to work on such topics as cost allocation and reimbursement (as well as cost-sharing) but the Council has not developed policies nor reviewed programs in these areas. It is difficult to find a single instance of the Council making recommendations to the President with respect to federal policies and programs, although that is a mandate of the Act.*

There are literally hundreds of policies and programs which have an impact on the water requirements of large regions of the nation: policies and programs involving water pollution, water pricing, weather modification, purification and reuse, reclamation, soil conservation, population dispersion, establishing new cities, desalinization, navigation, hydroelectric power, metropolitan areas, water resources research, etc. Many federal statutes dealing with water have contradictory policies, or are inadequate to meet regional needs. With a few exceptions, the Council has not studied any of these matters except tangentially as they relate to river basin or regional plans. From a review of the record, one concludes that the Council has not carried out the mandates of Section 102(b) of the Water Resources Planning Act.

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* As explained on page 117, supra, the Council's recommendation to the President in December 1968 to raise the discount rate was submitted at the President's request.

One may ask why the Council has plunged deeply into the planning arena and avoided policy and program issues. There are a number of reasons, but to a large extent the answer lies in the inherent limitations of the Council mechanism.

The Council has always had a limited staff and budget. Until two years ago it had a professional staff of about ten persons. And today the professional staff numbers only fifteen. Until recently, just keeping up with the enormous task of preparing for COR and Council meetings absorbed most of the staff's time. There was always more to do than was possible and the Director had to set priorities.

Development of the elements of the planning program was given top priority early in the history of the Council. The planning program was a natural evolution for the staff and the members of the COR, since that is what most of them had been associated with in one form or another prior to their involvement with the Council. Also, the statutory mandates for the planning program--a national assessment, a grant program, establishing river basin commissions, developing principles and standards, reviewing river basin plans--were somewhat more specific than the requirements of studying policies, programs, and the adequacy of coordinating mechanisms. Finally, at the time the Council came into existence, there were a number of ongoing river basin studies being conducted by interagency and ad hoc committees under the general direction of ICWR. When the

President transferred the functions of ICWR to the Council, the Council had to keep those planning efforts going.

The member agencies of the Council and their constituencies generally stood to gain from the planning program, but they had much to lose from pursuing the examination and resolution of controversial programs and policy matters. For example, a federal cost-sharing policy requiring greater monetary participation in projects by state and local entities might very well result in fewer projects for an agency to build. A higher discount rate similarly would result in fewer projects being built. An objective study of the program of the Bureau of Reclamation might lead to the conclusion that reclamation projects were not economical and not in the national interest.

This attitude of not tackling threatening issues and policies was perhaps more prevalent among the members of the COR than in the Council staff or among the members. As a practical matter it was the COR which was the motivating force for actions taken or not taken by the Council. The agenda for members' meetings was drawn up by the Director and the COR. Very few cabinet officers attended meetings of the Council. Its duties and activities have not commanded their personal attention.[355/] The Secretary of Interior as Chairman usually attended and so did the Chairman of the Federal Power Commission, but each of the other members usually sent some designated alternate to represent him. As time went on, meetings of members were held less and less frequently; in 1970 and 1971 there were only three members' meetings in the space of two years. Matters naturally drifted to the COR.

The members of the COR generally have been high level career civil servants, who are loyal to the agencies they represent. Some COR representatives, particularly from agencies not heavily involved in water resources activities, are many steps removed from the members or the members' designees, and have little, if any, contact with them. On controversial issues a protective mentality would often dominate COR discussions, and a level of statesmanship which considered broader national interests was not often achieved. Rarely would a representative vote for an action that might hurt his agency. Innovative actions by the COR were also rare since the results of innovation were often unpredictable and therefore potentially threatening. But the COR is not entirely to blame for avoiding controversial issues. Some difficult issues--for example, cost-sharing--did go to a meeting of the members for decisions, but the members would not resolve the issues definitively.

The position of the Director also is not conducive to the resolution of difficult issues or to having the Council staff and COR study policies and programs that might prove detrimental to any member agency. The Director is essentially an employee of the chairman of the Council who has been the Secretary of Interior from the Council's inception.[356] Unlike the member departments and agencies of the Council, the Director has no independent political constituency. Aside from his persuasive powers and his power to put issues on the agenda of the COR and then force them to the members, he cannot force a resolution of issues. The weakness of the position of Director is exacerbated when the Director is not personally close to the Chairman. In the past two years there have been three separate chairmen of the Council (Secretaries Hickel, Morton, and Acting Secretary Russell), and for a time the Director found it difficult to get to work closely with any chairman. The experience of the first Director was perhaps unusual since he had helped to write the Water Resources Planning Act and was personally very close to the then Secretary of the Interior and Chairman of the Council. But even the first Director had trouble with the COR on controversial matters.

The fact that the Chairman of the Council has always been chosen from the members of the Council and has traditionally been the Secretary of the Interior has also posed problems. There is a basic divergence of interest between the position of Chairman of the Council and the position of secretary of a department. In the water resources field, what is good for a department is not necessarily good for the country. While it is difficult to pinpoint any particular examples when the chairman favored his department over national considerations, the potential is there. The problems involved between the Council and the Westwide Study have put the

Secretary of Interior in an awkward position. One may well ask whether the Council might have attacked controversial policies and programs a bit more vigorously had there been an independent full-time chairman.[357/]

The Council has lacked a point of view which looks at water problems from a less parochial agency-oriented perspective. There is no policymaking component with a Presidential and national point of view. If all of the members attended meetings and maintained a deep interest in the Council, that national point of view might be present. The framers of the Act were relying on that attendance and interest so that policy would be made on national, not agency, terms. They feared that cabinet officers might not attend meetings. Their fears unfortunately have been justified.

The Director has tried to fill the need. In the past two years the Policy Division of the Council has gone from a staff of one to a staff of six. At least now the staff can consider policy issues more adequately than before. But its recommendations are likely to die with the COR or the members if the result is a policy which hurts a member agency.

The Council is further constrained in its policymaking activities by Section 3 of the Water Resources Planning Act. This section states, among other things, that the Act shall not be construed "to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office...."

or "as superseding, modifying, or repealing existing laws applicable to the various federal agencies which are authorized to develop or participate in the development of water and related land resources or to exercise licensing or regulatory functions in relation thereto....," with some exceptions. But despite the exceptions, this section has made it perfectly clear to the members and the COR that their statutory responsibilities under Acts of Congress pertaining to them or their agencies are not to be changed by the Water Resources Planning Act or by action of the Council. Section 3 thus reinforces the tendency not to reexamine policies and programs, established by Acts of Congress, which ought to be changed.

When each of the member agencies perceives the importance of a policy or issue and does not feel threatened by its resolution, or when the federal water agencies are collectively threatened by outside forces, then the policy matters are taken up and issues are resolved. Examples include the development of a federal position on the Susquehanna River Basin Compact and on the Tocks Island Project, the flood hazard guidelines for federal agencies to implement Executive Order 11296, and the model state statutes and ordinances for flood plain regulation. In these areas consensus was achieved and real contributions were made by the Council.

The Council has been criticized for operating on the basis of consensus, and it is true that the consensus rule limits what the

Council can achieve as it is now constituted. But the consensus rule has the great virtue that when issues are thrashed out and agreement is reached by the members, who are cabinet officers, the decision is likely to be implemented. If a cabinet officer were not to concur in a decision reached by the other members of the Council, only the President could force him to implement it. As a practical matter, the members of the Council have not, and are not likely, to push an issue to the President for enforcement if one member does not concur. Building consensus is a very important function of the Council.

The Council, as created by the Act, is not an enforcement agency. It has no coercive powers, except insofar as its members require their departments or agencies to follow Council decisions. Having resolved certain issues, the Council can recommend that the President issue executive orders so that such decisions will be followed throughout the federal government. However, that is rarely done; the Office of Management and Budget would have to approve the executive order, and the members do not like to bother a busy President.* Critics of the Council, expecting it to tackle, resolve, and implement controversial policies, often forget the consensual nature of the entire statutory arrangement. The Act required that the Council make an assessment, develop principles and standards, maintain continuous studies, review and comment on plans, make recommendations to the President--these are not implementing and enforcement powers.

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* But the President probably will approve formally the proposed principles and standards when they are issued in final form because of their importance and the necessity that they be adopted and followed by all federal agencies if they are to be effective.

VI. RECOMMENDATIONS

The Council is an important and useful mechanism. However, a number of improvements can be made to help it carry out the goals and mandates of the Water Resources Planning Act. The Council seems most weak in its ability to review the policies and programs of the federal agencies, to confront tough policy questions and resolve them, and to resolve interagency conflicts. A policymaking component, with an ability to enforce decisions when consensus cannot be reached, should be built into the Council mechanism. We believe that the implementation of the following two recommendations through appropriate legislation will help achieve this goal.

> Recommendation 1: The Council should have an independent full-time chairman, who is of equal status with members of the President's cabinet; he should be on the White House Staff and have access and report directly to the President; the Council should be placed within the Executive Office of the President.

Recommendation 2: Each person who serves on the Council of Representatives should report within his department or agency directly to the Council member or to his alternate.

DISCUSSION: These recommendations are two-pronged. First, an independent and full-time chairman on the White House Staff, with his own adequate staff and with Presidential support, should be able to inject a national and Presidential viewpoint into Council matters. Adequate Presidential support for the independent chairman is a key ingredient. The independent chairman should be able to innovate, tackle tough problems, resolve interagency conflicts, and stop mission-oriented agencies in the COR from dominating Council activities and from limiting efforts in controversial areas. He could force issues to the President for decision if necessary. His power to do so probably would mean that the power would not be used frequently, and the President thus should not be overburdened with water resource matters. A full-time chairman would not have to devote most of his energies to other matters as the present chairman, the Secretary of the Interior, must do. An independent chairman would give continuity to the Council in the event cabinet officers were changed, as has happened in the past few years, when three persons have been successively the Secretary of the Interior.

An independent chairman also avoids the conflict of interest problem. In addition, he would provide convenient support for members of the Council when they have to handle pressures from various bureaus in their agencies when such bureaus might be affected adversely by a Council decision. An independent chairman in the White House would also provide a focal point for communications between the White House and Presidentially appointed river basin commission chairmen.

An independent chairman could provide a counterweight to the Office of Management and Budget in the area of water policy. OMB for many years has played an important role in water resources policy and coordination. Executive Order 9384 of October 4, 1943, charged the Bureau of the Budget with the review of plans and projects for public works. The Program Coordination Division of OMB has responsibilities for interagency and intergovernmental coordination in federal programs. In many respects OMB duplicates and oversees many of the functions of the Council, and this role has its strength and weakness. OMB has often undertaken to speak for the President and has served as a spur to have the Council face policy issues that it otherwise might not have tackled, e.g., the unified national flood program. On the other hand, OMB has sometimes effectively vetoed Council decisions, such as the Council's decision that it should coordinate federal negotiators and representatives on interstate compacts. There has been no strong chairman consistently willing and able to speak directly to the President on water policy matters when OMB has effectively vetoed a Council position. An independent chairman on the White House Staff should be able to do this. While OMB has a role to play in water policy matters, its focus is strained by political and budgetary considerations. It should not be and cannot effectively be the water policymaker in the Executive Branch.

The second prong of these recommendations is to strengthen the links between the President, the Council members, and the members of the COR. The alternate of a member at members' meetings should be a person sufficiently close enough to the member to speak for him and his entire department or agency. An assistant secretary or person of equivalent status, with major responsibilities for water resources matters in his department or agency, would seem to be appropriate. Since the COR is a key working group of the Council, it must be composed of men who are of high caliber, who are close enough to the member so that each member is adequately represented on the COR, and who can approach problems from a national perspective. In many instances today the representative on the COR is not in close contact with either the member or his alternate at members' meetings. Upgrading the COR representative, letting him devote full time to Council activities, and having him report to the member or his alternate appears to be a way to solve this problem.

The policymaking component of the Council staff should be strengthened by the addition of highly qualified personnel so that this component may devote full time to hard policy issues, develop positions, and make recommendations. Strengthened policymaking should also help to improve the planning program. Having the staff report to the chairman will keep it independent of the COR and strengthen the chairman.

We have considered the alternative of recommending that the Vice President be the chairman of the Council, but we reject it. While this alternative has some attraction because of the prestige of the office and the Vice President's ability to deal with cabinet officers, the Vice President would still have many other duties and would not have particular expertise in the water planning and policy areas.

We also have considered a recommendation that the Water Resources Council be made a part of the Domestic Policy Council, but have rejected that alternative. The Domestic Policy Council is not created by statute and it is not clear what its future role is to be. The independent chairman, however, could be appointed by the President to the Domestic Council if that appeared desirable.

We have considered what the effect of the establishment of a Department of Natural Resources would be on the Council. The proposed legislation to create such a department is not entirely clear on this issue. We believe that even if a Department of Natural Resources were established there still would be a need for a Water

Resources Council because a number of federal agencies dealing with water resources would not be in the proposed department. The foregoing recommendations for improving the Council therefore appear to be applicable whether or not a Department of Natural Resources is established.

Recommendation 3: An independent board should be established: (1) to help the President review all plans developed under the auspices of the Council and sent to the President, in accordance with Section 104 of the Water Resources Planning Act, "for his review and transmittal to the Congress with his recommendations in regard to authorization of federal projects," and (2) to review all proposals for projects from the federal agencies in light of river basin plans and other national considerations.

DISCUSSION: There is a need for legislation to establish an independent review of federal water plans and projects at the federal level. While the water plans developed by the Council at the field level by the interagency and ad hoc committees and river basin commissions do receive a review by the Council staff and the COR, the Council staff is too immersed in the development of the plans to be completely objective, the COR members tend to approve plans if they contain or allow their agencies' projects, and the members of the Council personally do not have time to review plans. Even if recommendations 1 and 2 were implemented, the problem of an objective Council review would still remain. An independent board of review, consisting of perhaps three persons not otherwise connected with any federal or state water agency, and aided by a small staff, seems an appropriate mechanism to perform this review function.* At present no specific body is given the responsibility of aiding the President in his review function under Section 104 of the Water Resources Planning Act. No independent entity reviews specific project proposals and comments thereon to the Congress. While the Office of Management and Budget performs some review function, and its views on public works projects do go to the Congress, its review function is limited and tempered by budgetary and economic rather than other policy considerations. In any event, the function of the board of review should be advisory only. Its comments and recommendations should be forwarded to the President. If plans or projects are submitted to the Congress, the board's comments and recommendations thereon should be submitted to the Congress.

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* At least four other commissions studying and reporting on water resources matters have recommended the establishment of an independent board of review in one form or another: (1) The Commission on Reorganization of the Executive Branch of the Government (First Hoover Commission), H.Doc. 122, 81st Cong., 1st Sess., pp. 204 (1949); (2) Report of the President's Water Resources Policy Commission, Vol. I, p. 11 (1950); (3) Commission on Intergovernmental Relations (Kestnbaum Commission), pp. 241-247 (1955); (4) Presidential Advisory Committee on Water Resources Policy, H.Doc. 315, 84th Cong., 2d Sess., pp. XI-XII (1956).

Recommendation 4: The federal contributions for all water resources planning studies being conducted under the auspices of the Council by interagency and ad hoc committees and river basin commissions should be centrally funded by the Water Resources Council, with Congress appropriating monies for such studies directly to the Council, and the Council making the decisions on how the money should be dispersed.

DISCUSSION: The present system of funding river basin studies is not satisfactory. Today federal monies for river basin planning go to the participating federal agencies rather than the entity making the study. The appropriated monies may never become part of the study budget; agencies may use their funds to ensure that their pet projects are in the plan; shifting of funds as changes occur is difficult; the agency with the money may not be the best entity to do the planning. Central direction of the river basin planning effort by a responsible body or person is made more difficult. A more central administration of the river basin planning monies by a Council, revised as set forth in recommendations 1 and 2, should produce better plans. Appropriate legislation to implement this recommendation should be enacted.

We emphasize that centralized funding of river basin planning studies by the Council under the Water Resources Planning Act would in no way interfere with appropriations by Congress to the federal agencies for planning to carry out their statutory responsibilities under other acts of Congress.

Recommendation 5: The grant program under Title III of the Water Resources Planning Act should be extended for at least five years beyond the statutory expiration date in the Water Resources Planning Act, and the present statutory ceiling of $5 million per year should be removed.

DISCUSSION: The program of federal grants to states for augmented water planning has been beneficial, but the amounts granted have not been sufficient to adequately build up state capabilities. From 1965, when the Water Resources Planning Act was passed, until 1972, only about half of the monies authorized by the Act were appropriated by Congress for the state grant program. The states' participation in the Council's comprehensive planning program in many cases has been that of reacting to federally conceived plans. We believe the states should take a more active part in the planning of the nation's water resources. Increasing grants to states under Title III and extending the grant program for five more years, through FY 1981, would help to achieve this goal.

Recommendation 6: All applications emanating in any one year from various agencies of a particular state which seek federal funds for water and related land resource planning and programs should be consolidated into a single grant application and submitted to the Water Resources Council for its coordination of the grants of federal agencies from whom monies are sought.

DISCUSSION: At the present time states apply to many federal agencies for water planning and program grants. Each federal agency to whom an application is made often is unaware of grants being made by other federal agencies for water purposes. There is no overview of all of the federal grants for water purposes to a state and no unified federal judgment as to whether the grants sought are the best combination from both the national and the state points of view. The Council has successfully handled such a consolidated application from the State of Ohio. An executive order or other appropriate directive should be issued requiring the consolidated grant application approach from states seeking federal funds for water planning and programs.

Recommendation 7: If Congress passes legislation to establish a program of federal grants to states for improving state land use planning, it should make adequate provision in that legislation for coordinating that program with water resources planning at the state and federal levels.

DISCUSSION: Bills now pending in the Congress would establish various grant programs to enhance state land use planning capabilities. Some of these bills would create a Land and Water Resources

Council. Others would place a program of enhancing state land use planning in the Department of Interior. We do not feel that the record has been adequately developed for us to formulate positions on the various issues raised by these bills, nor do we believe that commenting on land use planning by itself is within the purposes of this study.

Nevertheless, there are strong interrelationships between water and land use planning, as Congress has recognized in the Water Resources Planning Act, where the term "water and related land resources" is used repeatedly. We therefore urge the President and the Congress in considering any legislation for a federal role in land use planning to make adequate provision for coordinating that federal effort with water resources planning at both state and federal levels.

Recommendation 8: The Secretary of Commerce, the Secretary of Housing and Urban Development, and the Administrator of the Environmental Protection Agency should be made statutory members of the Water Resources Council; the Secretary of Health, Education and Welfare should no longer be a statutory Council member; the Water Resources Planning Act should be amended to achieve these ends.

DISCUSSION: Toward the end of 1969, the members of the Water Resources Council approved the concept of adding the Secretaries of

Commerce and HUD, and the Administrator of EPA to the Council as full statutory members. Legislation was drafted for this purpose, but was not forwarded by the Administration to the Congress apparently because it seemed inconsistent with proposed Administration legislation to reorganize the Executive Branch. At the present time the Secretaries of Commerce and of HUD and the Administrator of EPA are non-statutory associate members of the Council; they cannot vote and their roles are essentially advisory.

Each of these agencies has been given substantial water resources responsibilities since the enactment of the Water Resources Planning Act in 1965. The Department of Commerce now has statutory responsibilities for certain marine resources affairs and for fostering industrial expansion and economic development involving substantial use of water resources.

The Department of Housing and Urban Development plans for urban population centers and provides a link between urban planning and comprehensive river basin planning. Its administration of the flood insurance program, established pursuant to the Housing and Urban Development Act of 1968, requires coordination with flood damage prevention programs, for which the Council has major responsibilities.

The Environmental Protection Agency now has the major responsibilities for water quality, a function that must receive adequate planning and coordination by the Council. The water quality function was vested in the Department of Health, Education and Welfare at the time the Water Resources Planning Act was passed in 1965. While HEW today has some water-related responsibilities, particularly in the field of public health, those responsibilities do not seem to us to justify continued statutory membership in the Council for HEW, which could hereafter participate in Council affairs as an associate member. There is some virtue in not having the statutory membership of the Council grow too large, and thus only those departments and agencies with major water responsibilities should have statutory membership.

We believe that appropriate legislation to achieve the ends of this recommendation should be enacted. If and when a Department of Natural Resources is established, Congress at that time can review the Water Resources Planning Act to see what other amendments to that Act would then be appropriate. Full membership in the Council for the Secretaries of Commerce and HUD and for the Administrator of EPA should better enable the Council and these agencies to carry out their statutory responsibilities.

Recommendation 9: Congress should enact appropriate legislation giving to the Chairman of the Water Resources Council the responsibility for coordinating federal participation in the negotiation and administration of water compacts.

DISCUSSION: There is a need to provide a focal point within the federal government for coordination of the federal interest in interstate and federal-interstate compacts dealing with water and related land resources. An independent Chairman of the Water Resources Council, which is charged by Congress to encourage the development of water and related land resources on a comprehensive and coordinated basis, is an appropriate person to have the responsibility to perform that function.

The effectiveness of federal participation in compact negotiations must be improved. The failure to arm federal negotiators with clearly stated federal policy positions on recurring water issues has caused unnecessary delay and confusion in compact negotiation and approval and has inadequately protected and promoted the national interest. Consequently, Congress should vest the Chairman of the Water Resources Council with the authority to supervise all federal compact negotiators. While the Office of Management and Budget has attempted some degree of coordination of federal compact negotiators in the past, that coordination has not been effective and the Office of Management and Budget is not an appropriate agency to fulfill that function.

The independent Chairman of the Council should maintain and distribute to appropriate federal officers and agencies current information relating to water compact negotiations and administration which may affect federal interests. He should provide appropriate information, advice, and assistance to states in the negotiation and drafting of water compacts. He should also designate federal negotiators upon request of a state or states unless otherwise provided by law or by executive order or other Presidential action. He should assist federal negotiators in obtaining information, advice, and support from other federal agencies; he should help develop a coordinated federal position on all substantive issues that arise in the course of negotiations for the guidance of the federal negotiator; and he should submit to the President his views and recommendations, as well as those of the Council, on any water compact presented to Congress for approval.

The Chairman of the Council should also provide guidance to federal representatives on compact commissions whether they serve a limited role as on ORSANCO, or the highly important role of federal representative to a federal-interstate compact of the Delaware and Susquehanna variety. Federal representatives in the administration of the water compacts should report to the President through the Chairman of the Water Resources Council.

Public Law 89-80
89th Congress, S. 21
July 22, 1965

An Act

To provide for the optimum development of the Nation's natural resources through the coordinated planning of water and related land resources, through the establishment of a water resources council and river basin commissions, and by providing financial assistance to the States in order to increase State participation in such planning.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Water Resources Planning Act.

SHORT TITLE

SECTION 1. This Act may be cited as the "Water Resources Planning Act".

STATEMENT OF POLICY

SEC. 2. In order to meet the rapidly expanding demands for water throughout the Nation, it is hereby declared to be the policy of the Congress to encourage the conservation, development, and utilization of water and related land resources of the United States on a comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and others concerned.

EFFECT ON EXISTING LAWS

SEC. 3. Nothing in this Act shall be construed—

Federal or state jurisdiction.

(a) to expand or diminish either Federal or State jurisdiction, responsibility, or rights in the field of water resources planning, development, or control; nor to displace, supersede, limit or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States, or of two or more States and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

Federal officials.

(b) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office except as required to carry out the provisions of this Act with respect to the preparation and review of comprehensive regional or river basin plans and the formulation and evaluation of Federal water and related land resources projects;

79 STAT. 244.
79 STAT. 245.

Federal agencies and international commissions.

(c) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water and related land resources or to exercise licensing or regulatory functions in relation thereto, except as required to carry out the provisions of this Act; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board and the United States Operating Entity or Entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico;

TIAS 5638.

River basin commissions.

(d) as authorizing any entity established or acting under the provisions hereof to study, plan, or recommend the transfer of waters between areas under the jurisdiction of more than one river basin commission or entity performing the function of a river basin commission.

TITLE I—WATER RESOURCES COUNCIL

SEC. 101. There is hereby established a Water Resources Council (hereinafter referred to as the "Council") which shall be composed of the Secretary of the Interior, the Secretary of Agriculture, the Secretary of the Army, the Secretary of Health, Education, and Welfare, and the Chairman of the Federal Power Commission. The Chairman of the Council shall request the heads of other Federal agencies to participate with the Council when matters affecting their responsibilities are considered by the Council. The Chairman of the Council shall be designated by the President.

Duties.

SEC. 102. The Council shall—

(a) maintain a continuing study and prepare an assessment biennially, or at such less frequent intervals as the Council may determine, of the adequacy of supplies of water necessary to meet the water requirements in each water resource region in the United States and the national interest therein: and

(b) maintain a continuing study of the relation of regional or river basin plans and programs to the requirements of larger regions of the Nation and of the adequacy of administrative and statutory means for the coordination of the water and related land resources policies and programs of the several Federal agencies: it shall appraise the adequacy of existing and proposed policies and programs to meet such requirements; and it shall make recommendations to the President with respect to Federal policies and programs.

Federal projects procedures.

SEC. 103. The Council shall establish, after such consultation with other interested entities, both Federal and non-Federal, as the Council may find appropriate, and with the approval of the President, principles, standards, and procedures for Federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects. Such procedures may include provision for Council revision of plans for Federal projects intended to be proposed in any plan or revision thereof being prepared by a river basin planning commission.

Review of plans.

SEC. 104. Upon receipt of a plan or revision thereof from any river basin commission under the provisions of section 204(3) of this Act, the Council shall review the plan or revision with special regard to—

(1) the efficacy of such plan or revision in achieving optimum use of the water and related land resources in the area involved:

79 STAT. 245.

79 STAT. 246.

(2) the effect of the plan on the achievement of other programs for the development of agricultural, urban, energy, industrial, recreational, fish and wildlife, and other resources of the entire Nation: and

(3) the contributions which such plan or revision will make in obtaining the Nation's economic and social goals.

Based on such review the Council shall—

(a) formulate such recommendations as it deems desirable in the national interest: and

Report to President and Congress.

(b) transmit its recommendations, together with the plan or revision of the river basin commission and the views, comments, and recommendations with respect to such plan or revision submitted by any Federal agency, Governor, interstate commission, or United States section of an international commission, to the

President for his review and transmittal to the Congress with his recommendations in regard to authorization of Federal projects.

Administrative provisions.

SEC. 105. (a) For the purpose of carrying out the provisions of this Act, the Council may: (1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable; (2) acquire, furnish, and equip such office space as is necessary; (3) use the United States mails in the same manner and upon the same conditions as other departments and agencies of the United States; (4) employ and fix the compensation of such personnel as it deems advisable, in accordance with the civil service laws and Classification Act of 1949, as amended; (5) procure services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a), at rates not to exceed $100 per diem for individuals; (6) purchase, hire, operate, and maintain passenger motor vehicles; and (7) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required to perform its functions under this Act.

63 Stat. 954;
78 Stat. 400.
5 USC 1071
note.
60 Stat. 810.

Oaths.

(b) Any member of the Council is authorized to administer oaths when it is determined by a majority of the Council that testimony shall be taken or evidence received under oath.

Records, public inspection.

(c) To the extent permitted by law, all appropriate records and papers of the Council may be made available for public inspection during ordinary office hours.

(d) Upon request of the Council, the head of any Federal department or agency is authorized (1) to furnish to the Council such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (2) to detail to temporary duty with such Council on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

(e) The Council shall be responsible for (1) the appointment and supervision of personnel, (2) the assignment of duties and responsibilities among such personnel, and (3) the use and expenditures of funds.

TITLE II—RIVER BASIN COMMISSIONS

CREATION OF COMMISSIONS

SEC. 201. (a) The President is authorized to declare the establishment of a river basin water and related land resources commission upon request therefor by the Council, or request addressed to the Council by a State within which all or part of the basin or basins concerned are located if the request by the Council or by a State (1) defines the area, river basin, or group of related river basins for which a commission is requested, (2) is made in writing by the Governor or in such manner as State law may provide, or by the Council, and (3) is concurred in by the Council and by not less than one-half of the States within which portions of the basin or basins concerned are located and, in the event the Upper Colorado River Basin is involved, by at least three of the four States of Colorado, New Mexico, Utah, and Wyoming or, in the event the Columbia River Basin is involved, by at least three of the four States of Idaho, Montana, Oregon, and Washington. Such concurrences shall be in writing.

79 STAT. 246.
79 STAT. 247.

Duties.

(b) Each such commission for an area, river basin, or group of river basins shall, to the extent consistent with section 3 of this Act—

(1) serve as the principal agency for the coordination of Federal, State, interstate, local and nongovernmental plans for the development of water and related land resources in its area, river basin, or group of river basins;

(2) prepare and keep up to date, to the extent practicable, a comprehensive, coordinated, joint plan for Federal, State, interstate, local and nongovernmental development of water and related resources: *Provided*, That the plan shall include an evaluation of all reasonable alternative means of achieving optimum development of water and related land resources of the basin or basins, and it may be prepared in stages, including recommendations with respect to individual projects;

(3) recommend long-range schedules of priorities for the collection and analysis of basic data and for investigation, planning, and construction of projects; and

(4) foster and undertake such studies of water and related land resources problems in its area, river basin, or group of river basins as are necessary in the preparation of the plan described in clause (2) of this subsection.

MEMBERSHIP OF COMMISSIONS

SEC. 202. Each river basin commission shall be composed of members appointed as follows:

Federal chairmen.

(a) A chairman appointed by the President who shall also serve as chairman and coordinating officer of the Federal members of the commission and who shall represent the Federal Government in Federal-State relations on the commission and who shall not, during the period of his service on the commission, hold any other position as an officer or employee of the United States, except as a retired officer or retired civilian employee of the Federal Government;

Federal agencies.

(b) One member from each Federal department or independent agency determined by the President to have a substantial interest in the work to be undertaken by the commission, such member to be appointed by the head of such department or independent agency and to serve as the representative of such department or independent agency;

States.

(c) One member from each State which lies wholly or partially within the area, river basin, or group of river basins for which the commission is established, and the appointment of each such member shall be made in accordance with the laws of the State which he represents. In the absence of governing provisions of State law, such State members shall be appointed and serve at the pleasure of the Governor;

Interstate agencies.

(d) One member appointed by any interstate agency created by an interstate compact to which the consent of Congress has been given, and whose jurisdiction extends to the waters of the area, river basin, or group of river basins for which the river basin commission is created;

International commissions.

(e) When deemed appropriate by the President, one member, who shall be appointed by the President, from the United States section of any international commission created by a treaty to which the consent of the Senate has been given, and whose jurisdiction extends to the waters of the area, river basin, or group of river basins for which the river basin commission is established.

79 STAT. 247.

79 STAT. 248.

ORGANIZATION OF COMMISSIONS

SEC. 203. (a) Each river basin commission shall organize for the performance of its functions within ninety days after the President shall have declared the establishment of such commission, subject to the availability of funds for carrying on its work. A commission shall terminate upon decision of the Council or agreement of a majority of the States composing the commission. Upon such termination, all property, assets, and records of the commission shall thereafter be turned over to such agencies of the United States and the participating States as shall be appropriate in the circumstances: *Provided*, That studies, data, and other materials useful in water and related land resources planning to any of the participants shall be kept freely available to all such participants.

Disposition of records.

(b) State members of each commission shall elect a vice chairman, who shall serve also as chairman and coordinating officer of the State members of the commission and who shall represent the State governments in Federal-State relations on the commission.

(c) Vacancies in a commission shall not affect its powers but shall be filled in the same manner in which the original appointments were made: *Provided*, That the chairman and vice chairman may designate alternates to act for them during temporary absences.

Vacancies.

(d) In the work of the commission every reasonable endeavor shall be made to arrive at a consensus of all members on all issues; but failing this, full opportunity shall be afforded each member for the presentation and report of individual views: *Provided*, That at any time the commission fails to act by reason of absence of consensus, the position of the chairman, acting in behalf of the Federal members, and the vice chairman, acting upon instructions of the State members, shall be set forth in the record: *Provided further*, That the chairman, in consultation with the vice chairman, shall have the final authority, in the absence of an applicable bylaw adopted by the commission or in the absence of a consensus, to fix the times and places for meetings, to set deadlines for the submission of annual and other reports, to establish subcommittees, and to decide such other procedural questions as may be necessary for the commission to perform its functions.

Chairmen, final authority.

DUTIES OF THE COMMISSIONS

SEC. 204. Each river basin commission shall—

(1) engage in such activities and make such studies and investigations as are necessary and desirable in carrying out the policy set forth in section 2 of this Act and in accomplishing the purposes set forth in section 201(b) of this Act;

(2) submit to the Council and the Governor of each participating State a report on its work at least once each year. Such report shall be transmitted through the President to the Congress. After such transmission, copies of any such report shall be sent to the heads of such Federal, State, interstate, and international agencies as the President or the Governors of the participating States may direct;

Report to President and Congress.

(3) submit to the Council for transmission to the President and by him to the Congress, and the Governors and the legislatures of the participating States a comprehensive, coordinated, joint plan, or any major portion thereof or necessary revisions thereof, for

Joint plan, transmission.

water and related land resources development in the area, river basin, or group of river basins for which such commission was established. Before the commission submits such a plan or major portion thereof or revision thereof to the Council, it shall transmit the proposed plan or revision to the head of each Federal department or agency, the Governor of each State, and each interstate agency, from which a member of the commission has been appointed, and to the head of the United States section of any international commission if the plan, portion or revision deals with a boundary water or a river crossing a boundary, or any tributary flowing into such boundary water or river, over which the international commission has jurisdiction or for which it has responsibility. Each such department and agency head, Governor, interstate agency, and United States section of an international commission shall have ninety days from the date of the receipt of the proposed plan, portion, or revision to report its views, comments, and recommendations to the commission. The commission may modify the plan, portion, or revision after considering the reports so submitted. The views, comments, and recommendations submitted by each Federal department or agency head, Governor, interstate agency, and United States section of an international commission shall be transmitted to the Council with the plan, portion, or revision; and

(4) submit to the Council at the time of submitting such plan, any recommendations it may have for continuing the functions of the commission and for implementing the plan, including means of keeping the plan up to date.

POWERS AND ADMINISTRATIVE PROVISIONS OF THE COMMISSIONS

SEC. 205. (a) For the purpose of carrying out the provisions of this title, each river basin commission may—

(1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable;

(2) acquire, furnish, and equip such office space as is necessary;

(3) use the United States mails in the same manner and upon the same conditions as departments and agencies of the United States;

(4) employ and compensate such personnel as it deems advisable, including consultants, at rates not to exceed $100 per diem, and retain and compensate such professional or technical service firms as it deems advisable on a contract basis;

(5) arrange for the services of personnel from any State or the United States, or any subdivision or agency thereof, or any intergovernmental agency;

(6) make arrangements, including contracts, with any participating government, except the United States or the District of Columbia, for inclusion in a suitable retirement and employee benefit system of such of its personnel as may not be eligible for or continuing in another governmental retirement or employee benefit system, or otherwise provide for such coverage of its personnel;

(7) purchase, hire, operate, and maintain passenger motor vehicles; and

(8) incur such necessary expenses and exercise such other powers as are consistent with and reasonably required to perform its functions under this Act.

Oaths.

(b) The chairman of a river basin commission, or any member of such commission designated by the chairman thereof for the purpose, is authorized to administer oaths when it is determined by a majority of the commission that testimony shall be taken or evidence received under oath.

Records, public inspection.

(c) To the extent permitted by law, all appropriate records and papers of each river basin commission shall be made available for public inspection during ordinary office hours.

(d) Upon request of the chairman of any river basin commission, or any member or employee of such commission designated by the chairman thereof for the purpose, the head of any Federal department or agency is authorized (1) to furnish to such commission such information as may be necessary for carrying out its functions and as may be available to or procurable by such department or agency, and (2) to detail to temporary duty with such commission on a reimbursable basis such personnel within his administrative jurisdiction as it may need or believe to be useful for carrying out its functions, each such detail to be without loss of seniority, pay, or other employee status.

Personnel.

(e) The chairman of each river basin commission shall, with the concurrence of the vice chairman, appoint the personnel employed by such commission, and the chairman shall, in accordance with the general policies of such commission with respect to the work to be accomplished by it and the timing thereof, be responsible for (1) the supervision of personnel employed by such commission, (2) the assignment of duties and responsibilities among such personnel, and (3) the use and expenditure of funds available to such commission.

COMPENSATION OF COMMISSION MEMBERS

Sec. 206. (a) Any member of a river basin commission appointed pursuant to section 202 (b) and (e) of this Act shall receive no additional compensation by virtue of his membership on the commission, but shall continue to receive, from appropriations made for the agency from which he is appointed, the salary of his regular position when engaged in the performance of the duties vested in the commission.

(b) Members of a commission, appointed pursuant to section 202 (c) and (d) of this Act, shall each receive such compensation as may be provided by the States or the interstate agency respectively, which they represent.

Chairmen.

(c) The per annum compensation of the chairman of each river basin commission shall be determined by the President, but when employed on a full-time annual basis shall not exceed the maximum scheduled rate for grade GS-18 of the Classification Act of 1949, as amended; or when engaged in the performance of the commission's duties on an intermittent basis such compensation shall be not more than $100 per day and shall not exceed $12,000 in any year.

78 Stat. 400.
5 USC 1113.

Expenses.

Sec. 207. (a) Each commission shall recommend what share of its expenses shall be borne by the Federal Government, but such share shall be subject to approval by the Council. The remainder of the commission's expenses shall be otherwise apportioned as the commission may determine. Each commission shall prepare a budget annually and transmit it to the Council and the States. Estimates of pro-

42 Stat. 20.
31 USC 1.

posed appropriations from the Federal Government shall be included in the budget estimates submitted by the Council under the Budgeting and Accounting Act of 1921, as amended, and may include an amount for advance to a commission against State appropriations for which delay is anticipated by reason of later legislative sessions. All sums appropriated to or otherwise received by a commission shall be credited to the commission's account in the Treasury of the United States.

(b) A commission may accept for any of its purposes and functions appropriations, donations, and grants of money, equipment, supplies, materials, and services from any State or the United States or any subdivision or agency thereof, or intergovernmental agency, and may receive, utilize, and dispose of the same.

Annual audit.

(c) The commission shall keep accurate accounts of all receipts and disbursements. The accounts shall be audited at least annually in accordance with generally accepted auditing standards by independent certified or licensed public accountants, certified or licensed by a regulatory authority of a State, and the report of the audit shall be included in and become a part of the annual report of the commission.

Accounts, inspection.

(d) The accounts of the commission shall be open at all reasonable times for inspection by representatives of the jurisdictions and agencies which make appropriations, donations, or grants to the commission.

TITLE III—FINANCIAL ASSISTANCE TO THE STATES FOR COMPREHENSIVE PLANNING GRANT AUTHORIZATIONS

Appropriation authorization.

Sec. 301. (a) In recognition of the need for increased participation by the States in water and related land resources planning to be effective, there are hereby authorized to be appropriated to the Council for the next fiscal year beginning after the date of enactment of this Act, and for the nine succeeding fiscal years thereafter, $5,000,000 in each such year for grants to States to assist them in developing and participating in the development of comprehensive water and related land resources plans.

(b) The Council, with the approval of the President, shall prescribe such rules, establish such procedures, and make such arrangements and provisions relating to the performance of its functions under this title, and the use of funds available therefor, as may be necessary in order to assure (1) coordination of the program authorized by this title with related Federal planning assistance programs, including the program authorized under section 701 of the Housing Act of 1954 and (2) appropriate utilization of other Federal agencies administering programs which may contribute to achieving the purpose of this Act.

73 Stat. 678.
40 USC 461.

ALLOTMENTS

Sec. 302. (a) From the sums appropriated pursuant to section 301 for any fiscal year the Council shall from time to time make allotments to the States, in accordance with its regulations, on the basis of (1) the population, (2) the land area, (3) the need for comprehensive water and related land resources planning programs, and (4) the financial need of the respective States. For the purposes of this section the population of the States shall be determined on the basis of the latest estimates available from the Department of Commerce and the land area of the States shall be determined on the basis of the official records of the United States Geological Survey.

(b) From each State's allotment under this section for any fiscal year the Council shall pay to such State an amount which is not more than 50 per centum of the cost of carrying out its State program approved under section 303, including the cost of training personnel for carrying out such program and the cost of administering such program.

STATE PROGRAMS

Sec. 303. The Council shall approve any program for comprehensive water and related land resources planning which is submitted by a State, if such program—

(1) provides for comprehensive planning with respect to intrastate or interstate water resources, or both, in such State to meet the needs for water and water-related activities taking into account prospective demands for all purposes served through or affected by water and related land resources development, with adequate provision for coordination with all Federal, State, and local agencies, and nongovernmental entities having responsibilities in affected fields;

(2) provides, where comprehensive statewide development planning is being carried on with or without assistance under section 701 of the Housing Act of 1954, or under the Land and Water Conservation Fund Act of 1965, for full coordination between comprehensive water resources planning and other statewide planning programs and for assurances that such water resources planning will be in conformity with the general development policy in such State;

73 Stat. 678.
40 USC 461.
78 Stat. 897.
16 USC 460l-4 note.

(3) designates a State agency (hereinafter referred to as the "State agency") to administer the program;

(4) provides that the State agency will make such reports in such form and containing such information as the Council from time to time reasonably requires to carry out its functions under this title;

(5) sets forth the procedure to be followed in carrying out the State program and in administering such program; and

(6) provides such accounting, budgeting, and other fiscal methods and procedures as are necessary for keeping appropriate accountability of the funds and for the proper and efficient administration of the program.

The Council shall not disapprove any program without first giving reasonable notice and opportunity for hearing to the State agency administering such program.

Notice of hearing.

REVIEW

Sec. 304. Whenever the Council after reasonable notice and opportunity for hearing to a State agency finds that—

Noncompliance. Curtailing of payment.

(a) the program submitted by such State and approved under section 303 has been so changed that it no longer complies with a requirement of such section; or

(b) in the administration of the program there is a failure to comply substantially with such a requirement,

the Council shall notify such agency that no further payments will be made to the State under this title until it is satisfied that there will no longer be any such failure. Until the Council is so satisfied, it shall make no further payments to such State under this title.

PAYMENTS

SEC. 305. The method of computing and paying amounts pursuant to this title shall be as follows:

(1) The Council shall, prior to the beginning of each calendar quarter or other period prescribed by it, estimate the amount to be paid to each State under the provisions of this title for such period, such estimate to be based on such records of the State and information furnished by it, and such other investigation, as the Council may find necessary.

(2) The Council shall pay to the State, from the allotment available therefor, the amount so estimated by it for any period, reduced or increased, as the case may be, by any sum (not previously adjusted under this paragraph) by which it finds that its estimate of the amount to be paid such State for any prior period under this title was greater or less than the amount which should have been paid to such State for such prior period under this title. Such payments shall be made through the disbursing facilities of the Treasury Department, at such times and in such installments as the Council may determine.

DEFINITION

SEC. 306. For the purpose of this title the term "State" means a State, the District of Columbia, Puerto Rico, or the Virgin Islands.

RECORDS

Maintenance.

SEC. 307. (a) Each recipient of a grant under this Act shall keep such records as the Chairman of the Council shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant, and the total cost of the project or undertaking in connection with which the grant was made and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Audit.

(b) The Chairman of the Council and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of the grant that are pertinent to the determination that funds granted are used in accordance with this Act.

TITLE IV—MISCELLANEOUS

AUTHORIZATION OF APPROPRIATIONS

SEC. 401. There are authorized to be appropriated not to exceed $300,000 annually, to carry out the provisions of title I of this Act, not to exceed $6,000,000 annually to carry out the provisions of title II, and not to exceed $400,000 annually for the administration of title III: *Provided*, That, with respect to title II, not more than $750,000 annually shall be available for any single river basin commission.

RULES AND REGULATIONS

SEC. 402. The Council is authorized to make such rules and regulations as it may deem necessary or appropriate for carrying out those provisions of this Act which are administered by it.

DELEGATION OF FUNCTIONS

SEC. 403. The Council is authorized to delegate to any member or employee of the Council its administrative functions under section 105 and the detailed administration of the grant program under title III.

UTILIZATION OF PERSONNEL

SEC. 404. The Council may, with the consent of the head of any other department or agency of the United States, utilize such officers and employees of such agency on a reimbursable basis as are necessary to carry out the provisions of this Act.

Approved July 22, 1965.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 169 accompanying H. R. 1111 (Comm. on Interior & Insular Affairs) and No. 603 (Comm. of Conference).
SENATE REPORT: No. 68 (Comm. on Interior & Insular Affairs).
CONGRESSIONAL RECORD, Vol. 111 (1965):
Feb. 25: Considered and passed Senate.
Mar. 31: Considered and passed House, amended, in lieu of H. R. 1111.
July 13: House agreed to conference report.
July 14: Senate agreed to conference report.

THE WATER RESOURCES COUNCIL

FOOTNOTES

1. The nine departments are Agriculture; Commerce; Defense; Health, Education and Welfare; Housing and Urban Development; Interior; State; Transportation; and Justice.

2. The independent agencies are the Appalachian Regional Commission, Atomic Energy Commission, Environmental Protection Agency, Federal Power Commission, Tennessee Valley Authority, National Science Foundation, and the Water Resources Council.

3. The offices or councils in the Executive Office include the Office of Management and Budget, Office of Science and Technology, Office of Emergency Preparedness, National Council on Marine Resources and Engineering Development, and the Council on Environmental Quality.

4. The federal-state commissions include two established by a federal-interstate compact: the Delaware River Basin Commission and the Susquehanna River Basin Commission; and seven established under the Water Resources Planning Act: New England River Basins Commission, Souris-Red-Rainy River Basins Commission, Pacific Northwest River Basins Commission, Great Lakes Basin Commission, Ohio River Basin Commission, Missouri River Basin Commission, and the Upper Mississippi River Basin Commission.

5. For a complete list of the federal water entities and a discussion of their legal mandates and functions, see Legal Study 20 of the National Water Commission.

6. 42 U.S.C.A. 1962 through 1962d-3.

7. 42 U.S.C.A. 1962a.

8. The Secretary of Transportation was added as a statutory member on April 1, 1967 on matters pertaining to navigation features of water resources projects. 49 U.S.C.A. 1656(a). As a practical matter the Department participates fully in Council deliberations and has not been limited to "matters pertaining to navigation features of water resources projects."

9. 18 C.F.R. §701.55.

10. 18 C.F.R. §701.56.

11. 42 U.S.C.A. 1962b.

12. 42 U.S.C.A. 1962.

13. 42 U.S.C.A. 1962-1. This section provides generally that the Act shall not be construed to affect federal or state jurisdiction over water resources, nor to affect interstate or federal interstate compacts, nor the power of Congress to authorize and fund projects; the Act is not to affect the responsibilities of Federal officials in carrying out their duties of office; the Act is not to be construed as changing existing laws pertaining to Federal agencies or as affecting the entities established by the Columbia River Basin Treaty or the International Boundary and Water Commission, United States and Mexico.

    Finally, 42 U.S.C.A. 1962-1(d) prohibits the Council, a river basin commission, or any entity acting as a river basin commission from studying, planning, or recommending certain interbasin transfers.

14. 42 U.S.C.A. 1962a-1(a).

15. 42 U.S.C.A. 1962a-1(b).

16. 42 U.S.C.A. 1962a-1(b).

17. 42 U.S.C.A. 1962a-1(b).

18. 42 U.S.C.A. 1962a-1(b).

19. 42 U.S.C.A. 1962a-2.

20. 42 U.S.C.A. 1962b, 1962b-2, 1962b-6.

21. 42 U.S.C.A. 1962a-3.

22. 42 U.S.C.A. 1962c.

23. 42 U.S.C.A. 1962b through 1962b-6.

24. If either the Upper Colorado River Basin or the Columbia River Basin is to be involved in a river basin commission, at least three of the four states in each basin must concur. 42 U.S.C.A. 1962b(a).

25. 42 U.S.C.A. 1962b-1.

26. 42 U.S.C.A. 1962b(b).

27. 42 U.S.C.A. 1962b-3(1).

28. 42 U.S.C.A. 1962b-3(3).

29. 42 U.S.C.A. 1962b-3(4).

30. 75 Stat. 688, 84 Stat. 1509.

31. 42 U.S.C.A. 1962b-2(d).

32. Id. The by-laws of each of the river basin commissions cover the procedures for determining issues on the basis of consensus and for recording objections, reservations, and individual positions. See by-laws: New England River Basin Commission, Art. IV, Sec. 2; Pacific Northwest River Basins Commission, Art. III, Secs. 1 and 2; Souris-Red-Rainy River Basins Commission, Art. II, Sec. 1; Great Lakes Basin Commission, Sec. 9; Ohio River Basin Commission, Sec. 9.

33. The situation might be otherwise under an interstate or federal-interstate compact where a sovereign might give up some of its sovereignty. See Dyer v. Sims, 341 U.S. 22 (1951). See also the discussion in Muys, Interstate Water Compacts, July 1971 at 299-310. (National Water Commission Legal Study 14, published by National Technical Information Service in July 1971, Accession No. PB 202 998.)

34. The legislative history of the Water Resources Planning Act on this issue bears out this interpretation. It is summarized in a memorandum in the files of the Water Resources Council dated December 10, 1969, from the Acting Legal Advisor to the Acting Executive Director. See Joint Hearings of the Committee on Interior and Insular Affairs and the Committee on Public Works, United States Senate, 87th Cong., 1st sess., on S. 2246, S. 1629 and S. 1778, July 26 and August 16, 1961; and Hearings of the Committee on Interior and Insular Affairs on S. 1629, July 10, 1961, at 23-24, 84-85, 88-89, 133. See also Hearings before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, United States Senate, 88th Cong., 1st sess., on S. 1111, September 12 and 13, 1963, at 12, 14, 17, 27-28, 44-45, 49, 57, 113; S. 1111, [Report No. 668], Calendar No. 648, 88th Cong., 1st sess., November 26, 1963; Senate Report No. 668 to accompany S. 1111, 88th Cong., 1st sess., November 26, 1963, at 6; Hearings before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, House of Representatives, 88th Cong., 2d sess., on S. 1111 and H.R. 3620, March 23, 24, 26, and April 20, 1964, at 5-6, 13, 19, 21, 23, 47, 142, 158-159.

35. 42 U.S.C.A. 1962c through 1962c-6.

36. 42 U.S.C.A. 1962c(a).

37. 42 U.S.C.A. 1962c(b).

38. 42 U.S.C.A. 1962c-1(a).

39. 42 U.S.C.A. 1962c-2.

40. Letter of March 29, 1966 from Alfred B. Fitt, Chairman, Inter-Agency Committee on Water Resources to the President, a copy of which is in the files of the Water Resources Council.

41. Letter of April 10, 1966 from President Lyndon B. Johnson to Honorable Stewart L. Udall, a copy of which is in the files of the Water Resources Council.

42. 18 C.F.R. §701.102. See also Hart, Gary W., Institutional Arrangements: River Basin Commissions, Inter-Agency Committees, and Ad Hoc Coordinating Committees, September, 1971 at 9, 61-62, and Appendix I, which lists the inter-agency and ad hoc committees as of that date. (National Water Commission, Part of Legal Study 13, published by National Technical Information Service in September, 1971, Accession No. PB 204 244.)

43. See Fox, Irving K., The Water Resources Planning Act: An Historical Perspective, in Seminar Summary, Water and Related Resources Management, The Challenge Ahead, February 2-4, 1971, published by the Interstate Conference on Water Problems and the Water Resources Council, Appendix A at 45-54.

44. The Report of the President's Water Resources Policy Commission, Vol. 3, Water Resources Law. 1950, pp. 75, 87 [hereinafter cited as Water Resources Law].

45. Water Resources Activities in the United States, Reviews of National Water Resources During the Past Fifty Years, Select Committee on National Water Resources, United States Senate, Committee Print No. 2, 86th Cong., 1st sess., October 1959, at (1).

46. 9 Wheat 1, 197 (1824).

47. For example, the assumption by the federal government of the responsibility for reducing flood losses in the United States by the construction of flood control projects did not really take place until the Flood Control Act of 1936 (Act of June 22, 1936, Sec. 1, 49 Stat. 1570) following major floods on the Mississippi River. Earlier attempts to have the United States assume this responsibility were not successful, in part due to the controversy over whether the United States should undertake internal improvements.

48. *Water Resources Law*, *supra*, note 44 at 88.

49. 4 Stat. 22, 175, April 20, 1824.

50. Holmes, Beatrice, *A History of Federal Water Resources Planning*, Vol. I, 1800-1960, at 4 (draft of unpublished manuscript) [hereinafter cited as *History*]. Much of the material in this historical section is based on that *History*.

51. *Id*. at 4.

52. *Water Resources Law*, *supra*, note 44 at 89.

53. *History*, *supra*, note 50 at 5.

54. *Id*. at 6.

55. *Id*.

56. *Water Resources Law*, *supra*, note 44 at 98.

57. *Water Resources Law*, *supra*, note 44 at 389.

58. 32 Stat. 388, June 17, 1902.

59. 34 Stat. 259, June 12, 1906.

60. Secs. 4, 5, 34 Stat. 116, 117, April 16, 1906.

61. 41 Stat. 451, February 5, 1920.

62. 16 U.S.C. 791a-825.

63. Sec. 6, 36 Stat. 962, March 1, 1911.

64. 34 Stat. 386, June 21, 1906, amended by 36 Stat. 593, June 23, 1910.

65. Compare Sec. 10(a), 41 Stat. 1068 with 36 Stat. 593.

66. 16 U.S.C. 791a-825a.

67. Water Resources Law, supra, note 44 at 402, 488.

68. Sec. 3, 32 Stat. 331, 372, June 13, 1902.

69. Water Resources Law, supra, note 44 at 99, nt. 143 citing H. Rep. No. 795, 57th Cong., 1st sess., p. 3 (1902); 35 Cong. Rec. 2913.

70. Sec. 3, 36 Stat. 630, 668, 669, June 25, 1910; Sec. 3, 37 Stat. 801, 825-826, March 4, 1913.

71. Sec. 3, 43 Stat. 1186, 1190, March 3, 1925.

72. 69th Cong., 1st sess. (1927).

73. Sec. 1, 44 (Part II) Stat. 1010, 1015, January 21, 1927.

74. Sec. 6, 49 Stat. 1028, 1043, August 30, 1935.

75. Op. cit. supra note 45 at (13).

76. Op. cit. supra note 43 at 46.

77. See, for example, S. 632, 92d Cong., 1st sess. (1971).

78. Sec. 10(a), 41 Stat. 1068, June 10, 1920. The present Act, as amended, is broader. 16 U.S.C. 803(a).

79. History, supra, note 50 at 6.

80. Op. cit. supra note 45 at (3), quoting from S. Doc 325, 60th Cong., 1st sess., at 15.

81. Op. cit. supra note 45 at 4, quoting from S. Doc. 325, 69th Cong., 1st sess., at 25-27.

82. Id.

83. Id.

84. The theme of comprehensive multipurpose river basin planning and development may be found in the reports of the National Conservation Commission, S. Doc. No. 676, 60th Cong., 2d sess., (1909) vol. 1, p. 24; The National Waterways Commission, S. Doc. No. 469, 62nd Cong., 2d sess., (1912) pp. 22-28, 174, App. I at pp. 82, 85; The President's Committee on Water Flows, H. Doc. 395, 73d Cong., 2d sess. (1934); The

National Resources Board (see Executive Order No. 6777, June 30, 1934, discussed in The Report of the President's Resources Policy Commission, Vol. 3, Water Resources Law (1950) at 413-414; The National Resources Committee established by Executive Order 7065 on June 7, 1935; The President's Water Resources Policy Commission (Cooke Commission) established on January 3, 1950, by Executive Order 10095; The President's Materials Policy Commission (Paley Commission) established on January 22, 1951; The Missouri Basin Survey Commission, established on January 3, 1952 by Executive Order 10318; and the Select Committee on National Water Resources of the United States Senate, established pursuant to S. Res. 48, 86th Cong., 1st sess., (1959) whose report was issued on January 30, 1961, Report No. 29, 87th Cong., 1st sess.

Most of the reports of these committees and commissions are summarized in "Water Resources Activities in the United States, Reviews of National Water Resources During the Past Fifty Years, Select Committee on National Water Resources," United States Senate, Committee Print No. 2, 86th Cong., 2d sess., October 1959.

85. 40 Stat. 250, August 8, 1917.

86. The full authorization is as follows:

> "to bring into coordination and cooperation the engineering, scientific, and constructive services, bureaus, boards, and commissions of the several governmental departments of the United States and commissions created by Congress that relate to study, development, or control of waterways and water resources and subjects related thereto, or to the development and regulation of interstate and foreign commerce, with a view to uniting such services in investigating, with respect to all watersheds in the United States, questions relating to the development, improvement, regulation, and control of navigation as a part of interstate and foreign commerce, including therein the related questions of irrigation, drainage, forestry, arid and swampland reclamation, clarification of streams, regulation of flow, control of floods, utilization of waterpower, prevention of soil erosion and water, storage, and conservation of water for agricultural, industrial, municipal, and domestic uses, cooperation of railways and waterways, and promotion of terminal and transfer facilities, to secure the necessary data, and to formulate and report to Congress, as early as practicable, a

comprehensive plan or plans for the development of waterways and water resources of the United States for the purposes of navigation and for every useful purpose, and recommendations for the modification or discontinuance of any project herein or heretofore adopted." Op. cit. supra note 45 at (10).

87. 41 Stat. 1063.

88. 47 Stat. 1428.

89. Sec. 101, 57 Stat. 169, 170, June 26, 1943.

90. History, supra note 50 at 38-43, 49.

91. 48 Stat. 58, May 18, 1933.

92. Sec. 1, 49 Stat. 1570, June 22, 1936.

93. 53 (Part II) Stat. 1187, August 4, 1939.

94. Sec. 9(b), 53 Stat. 1187, 1194. A number of examples of statutes requiring coordination between various federal agencies are given in Water Resources Law, supra note 44 at 431, note 196.

95. History of the Implementation of the Recommendations of the Senate Select Committee on National Water Resources, Committee on Interior and Insular Affairs, United States Senate, 90th Cong., 2d sess. (1969) at 18.

96. Water Resources Law, supra note 44 at 431.

97. Id. at 427; History, supra note 50 at 62. There were hearings in 1945 on a bill to create a Missouri Valley Authority. Similarly, hearings were held in 1949 on a proposal for a Columbia Valley Administration. "Other proposals introduced during this period included bills for the creation of particular valley authorities, bills for territorial expansion of TVA, bills for comprehensive surveys or planning only, bills for adopting certain basin-wide programs worked out by two or more agencies or by one agency, bills for consolidating existing agencies of government, bills for interstate commissions, and a bill for interstate associations." Water Resources Law, supra note 44 at 429 and footnotes.

98. Water Resources Law, supra note 44 at 432; op. cit. supra note 95 at 18.

99. After 1943, as before, Congress continued its intermittent attempts to have the various federal departments and agencies, involved in water resources, coordinate their activities.

For example, in 1943 Congress passed the Columbia Basin Project Act, which authorized the irrigation development program of the Bureau of Reclamation in that basin. By the late 1940's both the Bureau and the Corps had prepared reports on the long-range development of the basin. At President Truman's request, the two agencies prepared a coordinated report and the President asked Congress to use it as a basis for creating a Columbia Valley Authority. This proposal was rejected, and the President then asked for joint development by the Corps and the Bureau. History, supra note 50 at 74.

The 1944 Flood Control Act brought the states more completely into the water resources planning process and strengthened the basis for cooperation between the Corps of Engineers and the Bureau of Reclamation. Op. cit. supra note 95 at 18.

In 1946, the Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq., was passed. It provided for consultation aimed at preventing loss or damage to wildlife whenever any federal agency or non-federal agency operating under federal permit was authorized to impound, divert, or control waters. All federal construction agencies were required to consult with both the appropriate state agency and the Fish and Wildlife Service of the Department of the Interior. History, supra note 50 at 85-86.

The National Park Service, in 1947, was given blanket responsibility to undertake recreation planning for reclamation projects. Beginning in 1945, it also undertook recreation planning for Corps of Engineers' projects when requested to do so. It frequently opposed reservoir projects of the construction agencies when it believed this would inundate scenic or historic sites or spoil wilderness areas. History, supra note 50 at 86-87. But see Legal Study 17, Legal Devices for Accommodating Developmental and Environmental Values, by William A. Hillhouse II, prepared for the National Water Commission at 87-91. Even after the passage of the Water Resources Planning Act of 1965, Congress, in various pieces of legislation dealing with water resources, continued to call for various kinds of coordination between federal agencies and between a federal agency and local and state agencies. See the Saline Water Conversion Act of 1971 for a recent example, 42 U.S.C.A. §§ 1959c(j), 1959d(a), (b), and (c).

100. History, supra, note 50 at 108-109.

101. Id. at 109.

102. Id. at 109-110.

103. Id. at 110.

104. History, supra note 50 at 81.

105. A Report of the President's Advisory Council on Executive Organization noted several conflicts involving the Bureau of Reclamation, the Corps of Engineers and the Soil Conservation Service. See Memoranda for The President of the United States, Establishment of a Department of Natural Resources Organization for Social and Economic Programs (February 5, 1971), at 5.

"Examples of conflicts include the Angostoria River in South Dakota and the Foss Reservoirs in Oklahoma. In South Dakota, upstream development by the Soil Conservation Service in the form of hundreds of watershed ponds so reduced the flow of the river that the Bureau power plant downstream ceased to operate." In Oklahoma, detention of water by the SCS caused a reduction in quality and quantity of water flowing downstream to a Bureau reservoir. See Ely, Northcutt, Legal Problems Involved in the Authorization of Federal Water Resources Projects, Legal Study 12, prepared for the National Water Commission at 151-153 (published by National Technical Information Service in December 1971, Accession No. PB 206 096). Numerous other examples of agency conflict are cited by Ely.

106. History, supra note 50 at 111.

107. History, supra note 50 at 111-112; op. cit. supra note 95 at 18.

108. History, supra note 50 at 112-113.

109. Op. cit. supra note 95 at 18; Water Resources Activities, note 45 at 27.

110. Water Resources Activities, note 45 at 30.

111. Id. at 34-35.

112. Water Resources Policy, House Document 315, 84th Cong., 2d sess. (1956).

113. *Water Resources Activities*, note 45 at (43)-44.

114. *Op*. *cit*. *supra* at note 112 at 2.

115. *Id*. at 3.

116. *Id*. at 14.

117. *History of the Implementation of the Recommendations of the Senate Select Committee on Natural Resources*, Committee on Interior and Insular Affairs, United States Senate, 90th Cong., 2d sess. (1969) at (5).

118. *Report of the Select Committee on National Water Resources Pursuant to S. Res. 48, 86th Congress*, Report No. 29, 87th Cong., 1st sess., January 30, 1961, at 17-18.

119. *Id*. at 18.

120. *Id*. at 19.

121. *Id*. at 18-19.

122. *Id*. at 49.

123. *Id*. at 50.

124. *Id*. at 70-71.

125. *History of the Implementation of the Recommendations of the Senate Select Committee on Natural Water Resources*, Committee on Interior and Insular Affairs, United States Senate, 90th Cong., 2d sess (1969).

126. *Id*. at 19-20.

127. *Id*. at 20.

128. *Id*. at 21-22. See U. S. Congress. H. Doc. 94, 87th Cong., 1st sess., 1961, p. 3.

129. *Op*. *cit*. *supra* note 125 at 22-23.

130. *Id*. at 23.

131. *Id*. at 24.

132. *Id*. at 24-27.

133. Id. at 27-28.

134. Id. at 28-29.

135. Id. at 30.

136. Id. at 31.

137. Id.

138. Id. at 32.

139. Id. at 32-33.

140. Id. at 33.

141. Id. at 34-35.

142. Id. at 36-37.

143. Id. at 37-41.

144. Id. at 46.

145. Id. at 46.

146. Id. at 50-51.

147. Id. at 51.

148. Id. at 52.

149. Id. at 52-54.

150. 18 C.F.R. Parts 701, 703.

151. 42 U.S.C.A. 1962a; 49 U.S.C.A. 1656(a).

152. The Act provides that the President shall designate the Chairman, but does not say that the Chairman must be chosen from the members of the Council. 42 U.S.C.A. §1962a. The Chairman conceivably would not have to be a cabinet officer nor a member of the Council.

153. 18 C.F.R. §701.53(e).

154. The Council met on November 20, 1969, June 20, 1970 and October 15, 1971. See minutes of Council meetings at the Offices of the Council.

155. The Council's regulations permit each member to name an individual to act for him. 18 C.F.R. §701.53(a).

156. 18 C.F.R. §701.53.

157. 18 C.F.R. §701.54(d). Prior to July of 1970 the representatives met every two weeks or more often. 31 F.R. 14717, §701.54(d).

158. 18 C.F.R. §701.54. The reason for the rule allowing a member to be represented by more than one individual lies in part with the various constituencies represented by some departments. For example, on occasion the Secretary of Interior has been simultaneously represented by individuals from the Bureau of Reclamation, the Bureau of Outdoor Recreation, and from the Office of the Assistant Secretary for Water and Power. The practice at COR meetings has changed since the Council's second Executive Director, W. Don Maughan, took office in March of 1970. Prior to that time, when Henry Caulfield was Director, all of the individuals representing a member participated in the COR discussions and sat around the main discussion table. Now only one representative for each member, associate member, or observer sits at the discussion table and participates. Other individuals, from the staff or other agencies, may be present in the room, however, during COR meetings.

159. 18 C.F.R. §701.53(g).

160. 18 C.F.R. §701.54(f).

161. 18 C.F.R. §701.54(d).

162. 18 C.F.R. §701.54(g).

163. 18 C.F.R. §701.54(h).

164. The issue is discussed in a memorandum of September 24, 1966 from the Executive Director, Henry Caulfield, to the Chairman, Stewart Udall. See also the Weekly Report of the Executive Director for September 26, 1966. The representatives of the members (at that time operating as an Interdepartmental Staff Committee) had under consideration certain issues involving the Ramparts Project. They had been asked to consider those issues by the Secretary of the Interior. No rules and regulations had yet been issued by the Council; there was no formal Council of Representatives nor was there any formal procedure on how issues were to reach and be resolved by the members. Caulfield argued that any issue presented by a member should be investigated impartially by the staff in cooperation with the representatives of the members and of

other agencies directly concerned; then the representatives of the members and the members themselves should consider the issue. Caulfield's memorandum notes three alternative procedures which the representatives had wanted: (1) water and related land resources issues arising between members would be negotiated by the members themselves without involvement of the Council or the staff; (2) the Council would consider an issue only if a majority of members wished to consider it, and there would be no prior staff study prior to consideration; (3) the Council would not handle issues like that presented by the Ramparts Project.

If this account of the representatives' position is accurate, it shows how fearful the representatives were of having the Council consider policy issues, the resolution of which might be detrimental to a particular department or agency. The representatives were generally -- and still are -- high level civil servants with long service. They usually try to protect their departments or agencies. The members themselves, being political appointees, tend to have a less parochial view.

Caulfield won the battle, but not the war. The opposition of the representatives to resolving thorny issues and the difficulty a small staff has in developing and raising such issues has plagued the Council's effectiveness since its inception.

165. 18 C.F.R. §701.55(b).

166. 18 C.F.R. §701.71(c).

167. 42 U.S.C.A. 1962-1(b). That provision reads as follows:

> "Nothing in this chapter shall be construed . . . .
>
> (b) to change or otherwise affect the authority or responsibility of any Federal official in the discharge of the duties of his office except as required to carry out the provisions of this Chapter with respect to the preparation and review of comprehensive regional or river basin basin plans and the formulation and evaluation of Federal water and related land resources projects;".

168. 18 C.F.R. §701.55(b).

169. 18 C.F.R. §701.5(d). This organization of the staff differs from the staff organization under the prior Director, Henry Caulfield (the Director from the inception of the Council in 1965 until he resigned in August of 1969). Caulfield's staff included a Director, a Deputy Director, an Assistant Director for Planning, an Assistant Director for State Grants, an Assistant Director for Policy, a Research Advisor, and an Administrative Officer. 31 F.R. 14719-14720, §701.79. The Assistant Director for Policy also served as Legal Advisor. Under Caulfield, the professional staff at its maximum numbered about ten persons.

170. 35 F.R. 12105-12113.

171. 31 F.R. 14716-14723, 32 F.R. 712.

172. 18 C.F.R. 701.79(d).

173. 18 C.F.R. 701.79(b).

174. 18 C.F.R. 701.60(a).

175. 18 C.F.R. 701.79(c).

176. 18 C.F.R. 701.79(c). See COR Agenda Memorandum, #72-1-3.

177. 18 C.F.R. 701.61.

178. 18 C.F.R. 701.62.

179. See COR Agency Memorandum for that meeting.

180. 18 C.F.R. 701.102.

181. 18 C.F.R. 701.5(g).

182. *Water Project Planning Policy*, hearings before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, House of Representatives, 88th Cong., 1st sess., March 28 and 29, April 25 and 26, 1963 at 2-5.

183. Memorandum for the Secretary of Interior from John F. Kennedy, dated October 6, 1961.

184. *Policies, Standards, and Procedures in the Formulation, Evaluation and Review of Plans for Use and Development of Water and Related Land Resources*, Senate Document No. 97, 87th Cong., 2d sess., May 29, 1962.

185. *Id*. at VII. (Letter of President John F. Kennedy to the Secretary of the Interior; the Secretary of Agriculture; the Secretary of Health, Education and Welfare; and the Secretary of the Army, May 15, 1962.)

186. In fact, the Interdepartmental Staff Committee continued to meet as the group representing the Council members until the COR was formally established on November 18, 1966. See the Weekly Reports of the Executive Director in the files of the Water Resources Council [hereinafter cited as W.R.].

187. 31 F.R. 14716-14723.

188. See *Remarks of Reuben J. Johnson, Deputy Director, at Water Resources Seminar, University of Delaware*, February 8, 1968 at 8-9.

189. See *Water Resources Planning Act*, hearings before the Subcommittee on Irrigation and Reclamation of the Committee on Interior and Insular Affairs, House of Representatives, 88th Cong., 2d sess., on S. 1111 and H.R. 3620, March 23, 24, 26 and April 30, 1964 at pp. 117-132.

190. W.R., September 26, 1966.

191. W.R., May 27, 1966, January 6, 1967, and May 6, 1967.

192. W.R., November 15, 1968, January 24, 1969, and March 6, 1969.

193. W.R., February 18, 1967 and May 12, 1967.

194. W.R., May 12, 1967.

195. W.R., June 8, 1968.

196. W.R., August 5, 1966.

197. W.R., October 25, 1968; see National Flood Insurance Act of 1968, §1302(c) (P.L. 90-448).

198. W.R., September 26, 1966.

199. *Op*. *cit*., *supra* note 185.

200. Glick, Philip M., *The Water Resources Council, Coordination of Federal, State, Regional and Local Water Activities*, at 37: Staff discussion paper in the files of the National Water Commission. See also the President's Budget Message, January 29, 1968, at 31 and 109.

201. Some of the bills the COR and staff discussed included legislation pertaining to pollution (W.R., May 26, 1966, February 17, 1968); scenic and wild rivers (W.R., February 13, 1967); water quality control benefits and costs (W.R., February 25, 1967); sewage treatment plants (W.R., February 17, 1968); establishing the Potomac as a national river (W.R., February 17, 1968); the establishment of a Council on Environmental Quality (W.R., February 17, 1968); nuclear energy (the Director testified on the bill) (W.R., May 3, 1968); consent legislation for the Great Lakes Basin (W.R., April 20, 1968); drift and debris removal (W.R., June 26, 1968); consent legislation to the Susquehanna River Basin Compact (W.R., June 5, 1970: the Assistant Secretary for Water and Power of the Department of Interior testified in Congress on this bill on behalf of the Council).

202. Regulation of Flood Hazard Areas to Reduce Flood Losses, Vol. One, Parts I-IV, United States Water Resources Council (1971).

203. For example, the issues involved in formulating a Council position on the discount rate to be used in project formulation and evaluation was discussed in at least sixteen meetings. No less than fourteen COR meetings took up the issues involved in formulating a federal position on the proposed Susquehanna Compact. The National Assessment was a topic of discussion in approximately twenty COR meetings -- the time devoted to these topics by COR excludes staff and task force work on the issues. Cf. Weekly Reports of the Executive Director.

204. W.R., May 26, 1966.

205. W.R., August 12, 1966; August 19, 1966; September 10, 1966.

206. W.R., March 17, 1967.

207. W.R., October 22, 1967.

208. W.R., September 1, 1967.

209. W.R., January 26, 1968.

210. W.R., November 8, 1968.

211. There are some additional conditions. Also, different rules apply for the Upper Colorado River Basin and the Columbia River Basin. See 42 U.S.C.A. 1962b(a).

212. The Weekly Report of the Executive Director for May 13, 1966 lists three items on the Executive Director's priority task list: (1) development of rules and regulations, including the definition of the relationship between the Interdepartmental Staff Committee and the Director; (2) establishment of river basin commissions; (3) appointment of an administrative officer. The establishment of river basin commissions is the only substantive matter on the list.

213. The subject of the establishment of various river basin commissions was an item on most of the agendas of the COR for the first two years of the Council's existence.

214. The Pacific Northwest River Basins Commission was established by Executive Order No. 11331 on March 6, 1967 (32 F.R. 3875); the Great Lakes Basin Commission, by Executive Order No. 11345 on April 20, 1967 (32 F.R. 6329); the Souris-Red-Rainy River Basins Commission by Executive Order No. 11359 on June 20, 1967 (32 F.R. 8851); and the New England River Basins Commission by Executive Order No. 11371 on September 6, 1967 (32 F.R. 12903).

215. Executive Order No. 11578. See Weekly Compilation of Presidential Documents, January 18, 1971 at 60.

216. Executive Order No. 11658, issued March 22, 1972.

217. Executive Order No. 11659, issued March 22, 1972.

218. The Souris-Red-Rainy River Basins Commission is the only one of the commissions with a termination date set out in the Executive Order establishing it. Section 7 of Executive Order 11359 states in part:

> "Consideration shall be given to consolidating the Commission with a Missouri River Basin Commission if and when . . . established. If a consolidation does not occur, the Commission shall terminate within six months after the submission of the comprehensive river basin plan . . . or on June 30, 1972, whichever is earlier; unless, upon recommendation of both the Council and not less than one-half the number of member States, this order is extended."

Executive Order No. 11635, issued December 9, 1971, extended the life of the SRRRBC until June 30, 1973. The Chairman of that Commission has stated that the state members do not want the Commission terminated, because they feel it is working well and the Commission will be swallowed up if merged into the Missouri River Basin Commission. (Telephone conversation between Chairman Henry Hendrickson and the author on October 29, 1971.)

219. See COR Agenda Memorandum, December 1, 1971, Attachment A. See also Water Resources Council Press Release for July 25, 1971.

220. W.R., May 25, 1968. The Southeast Basins Interagency Committee wrote to the Council to inquire if funds made available to river basin commissions under Title II of the Act or funds made available to states under Title III of the Act could be made available to SEBIAC. The Director replied that such funds were not available, but Title II funds to meet management costs would be available if SEBIAC would become a Title II commission. For an analysis of the reasons why the states in the Pacific Southwest have shown little inclination to form a Title II commission, see Hart, Gary W., Institutions for Water Planning, at 83-86 (1971) (published by National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22151, under Accession No. PB 204 244).

221. The federal principles, standards, and procedures would not apply, for example, to the determination of whether a particular state-funded project would be built by a state even though economic costs might exceed the benefits. Similarly a state would not have to use the federal discount rate for its projects.

222. 42 U.S.C.A. 1962b-2(a).

223. Executive Order No. 11528, April 24, 1970, 35 F.R. 6695.

224. Executive Order No. 11613, August 2, 1971, 36 F.R. 14299.

225. *Op. cit. supra* note 223.

226. Executive Order No. 11646, issued February 8, 1972.

227. 42 U.S.C.A. 1962a-1(a).

228. *The Nation's Water Resources*, United States Water Resources Council, Washington, D. C. 1968.

229. COR Agenda Memorandum No. 71-9-6 (amended 8-30-71).

230. *Op. cit. supra* note 228, Appendix 2 at 7-2-1.

231. Op. cit. supra note 228 at 2-3.

232. Id. at 2-1.

233. Id. at 3-1.

234. Id. at 2-2.

235. Id.

236. COR Agenda Memorandum No. 71-9-6.

237. Remarks of W. Don Maughan, Director, Water Resources Council, at the 71st Meeting of the Arkansas-White-Red Interagency Committee, Colorado State University, July 7-9, 1970, at 6.

238. Tentative Handbook, 1975 National and Regional Assessments, September 1, 1971, United States Water Resources Council, Washington, D. C.

239. Report of the Select Committee, supra note 118 at 17-18.

240. A Supplement No. 1 to Sen. Doc. 97 was issued on June 4, 1964, entitled "Evaluation Standards For Primary Outdoor Recreation Benefits."

241. Letter from David S. Bell, Director, Bureau of the Budget, to Stewart L. Udall, Secretary of Interior, June 4, 1962.

242. Letter from the Secretaries of Agriculture, Army, Interior, and Health, Education and Welfare, to Kermit Gordon, Director, Bureau of the Budget, dated December 12, 1963.

243. Letter from Elmer B. Staats, Deputy Director, Bureau of the Budget, to the Honorable Allen J. Ellender, Subcommittee on Public Works, dated August 2, 1963.

244. Letter, supra note 242.

245. Letter from the Secretaries of Agriculture, Army, Interior, and Health, Education and Welfare to David S. Bell, Director, Bureau of the Budget, dated November 27, 1962. See also letter, supra note 243.

246. Letter of November 27, 1962, supra note 245 at 2. See also remarks of Reuben J. Johnson, Acting Executive Director, Water Resources Council, at the Meeting of the Tennessee Valley Section, American Society of Civil Engineers - Knoxville, Tennessee, November 14-15, 1969, at 10.

247. Letter of November 27, 1962, supra note 245.

248. Remarks of Johnson, supra note 246 at 11.

249. Water Resources Council Activities As They Affect Nevada, paper presented by Mark V. Hughes, Jr., Regional Leader, Western States, Water Resources Council, at the Nevada Water Conference, Carson City, Nevada, September 24-25, 1970 at 2-3.

250. COR Agenda Memorandum for June 29, 1971 at 18.

251. Oral Presentation of the Water Resources Council FY 1972 Before the Appropriation Subcommittees on Public Works, April 22, 1971, Statement of the Director at 3. See also, Testimony, infra note 274 at 18.

252. COR Agenda Memorandum for June 29, 1971 at 19. Completed Type 2 studies were those for the Big Black River Basin, Big Muddy River Basin, Pascagoula River Basin, Pearl River Basin, Red River Below Denison, Sabine River Basin, Susquehanna River Basin, and White River Basin. The Type 2 studies in progress include those for the Connecticut, Gennessee, Kanawha, Wabash, Willamette, and Grand river basins, and the Puget Sound Region, the Red River of the North, and Southeastern New England.

253. Oral Presentation, supra note 251 at 4. See also Testimony, infra note 274 at 19.

254. Remarks of Johnson, supra note 246 at 6-7.

255. A Policy Statement, Water and Related Land Resources Planning, Water Resources Council, Washington, D. C., June 22, 1970.

256. Water and Related Land Resources Planning, Remarks by W. Don Maughan before the Seventh American Water Resources Conference, Washington, D. C., October 24-28, 1971 at 6-7.

257. Id. at 7-8.

258. Id. at 9.

259. Id. at 9-10.

260. Id. at 12-13. See also the Policy Statement, supra note 255.

261. Policy Statement, supra note 255 at 3.

262. Environmental Statements - Framework Studies and Assessments and Regional or River Basin Plans, United States Water Resources Council, Washington, D. C., February 10, 1971.

263. 36 F.R. 24144-24194.

264. Revision of Completed Regional or River Basin Plans, United States Water Resources Council, Washington, D. C., September 8, 1971.

265. P.L. 90-537, 82 Stat. 885.

266. P.L. 90-537, §102(b).

267. P.L. 90-537, §201.

268. Western U. S. Water Plan, Proposed Plan of Study, official review draft, April 1, 1971, Denver, Colorado at II-3.

269. COR Agenda Memorandum, March 3, 1971, No. 71-2-2, at 12-13.

270. Western U. S. Water Plan, 1971 Progress Report at 33.

271. Id. at 6.

272. Id. at 7.

273. Official review comments in the plan of study for the Western U. S. Water Plan; see letter of W. Don Maughan, Director of the United States Water Resources Council, to Honorable Ellis L. Armstrong, dated June 1, 1971.

274. Testimony before the Appropriations Subcommittee on Public Works, Fiscal Year - 1972, W. Don Maughan, Director, United States Water Resources Council, April 22, 1971 at 20.

275. Id. at 21-22.

276. Id. at 23-24.

277. Water and Related Land Resources Planning, supra, note 256 at 13-18; Remarks of Johnson, supra note 246 at 8-9; Preliminary Report on Economic Projections for Selected Geographic Areas, 1929 to 2020, Volume I (Draft for Comment and Criticism), United States Water Resources Council, Washington, D. C., March 1968.

278. Preliminary Report, supra note 277 at 4.

279. Water and Related Land Resources Planning, supra note 256 at 17.

280. Id. at 15-16.

281. See COR Agenda, June 29, 1971, at 26-28, for a general discussion of the central funding issue.

282. Remarks of W. Don Maughan, supra note 237 at 12-13; Water Resources Council Activities, supra note 249 at 8-9.

283. Remarks of Maughan, supra note 237 at 13.

284. COR Agenda Memorandum #71-1-2 (Attachment).

285. See Water and Related Land Management, The Challenge Ahead, ICWR-WRC Seminar Summary, February 2-4, 1971, Sheraton Gibson Hotel, Cincinnati, Ohio.

286. Advisory Relationships, Report to the COR by the Policy Development Committee, COR Agenda for July 6, 1971.

287. Remarks of Maughan, supra note 237, Attachment.

288. See 36 F.R. 24150-24151.

289. COR Agenda Memorandum, December 2, 1970, #70-19-5. The formation of the National Oceanic and Atmospheric Administration in 1970 and its inclusion in the Department of Commerce, substantially increased that Department's water resources activities. The Department of Housing and Urban Development increased its water responsibilities with the passage of the Flood Insurance Act of 1968, P.L. 90-448. The Environmental Protection Agency now has the major federal responsibility for water quality activities.

290. S. 1431, April 1, 1971, 92d Cong., 1st sess. See COR Agenda Memorandum, May 4, 1971.

291. W.R., July 21, 1967.

292. W.R., October 28, 1966.

293. W.R., February 28, 1969.

294. W.R., March 14, 1969.

295. Testimony Before the Appropriations Subcommittee on Public Works, FY - 1972, W. Don Maughan, Director, Water Resources Council, April 22, 1971 at 60.

296. W.R., August 4, 1967, January 26, 1968, and October 31, 1969.

296A. Testimony, supra note 295 at 61.

297. Testimony, supra note 295 at 68-69; see COR Agenda Memorandum #71-7-6; interview with Jack Roose, Policy Director for the Council, on May 18, 1971.

298. The material in this section on Grants to States came from a number of sources, some of which are working papers from the Council's Federal-State Programs Division. For other sources see The Water Resources Council, Coordination of Federal, State, Regional, and Local Water Activities, by Philip M. Glick, December 1, 1970, unpublished discussion paper prepared for the National Water Commission, at 30-32; Testimony Before the Appropriations Subcommittee on Public Works, Fiscal Year - 1972, W. Don Maughan, April 22, 1971 (published by the Water Resources Council); COR Agenda Memorandum for November 4, 1970, #70-18-5 at 49; COR Agenda Memorandum for December 1, 1971 at 3; COR Agenda Memorandum for October 15, 1971, #71-10-3 at 17-25; COR Agenda Memorandum for August 4, 1971, #71-8-6 at 52-53.

299. Testimony, supra note 295 at 73-74. Cf. Ohio Consolidated Grant Analytical Report, United States Water Resources Council, Washington, D. C. 20037.

300. 42 U.S.C.A. 1962a-2.

301. 36 F.R. 24144-24194.

301A. Cf. 36 F.R. 24150.

301B. Cf. 36 F.R. 24149.

302. Appalachian Regional Development Act of 1965 (P.L. 89-4); Federal Water Project Recreation Act of 1965 (P.L. 89-72); Water Resources Planning Act of 1965 (P.L. 89-80); Public Works and Economic Development Act of 1965 (P.L. 89-136); Water Quality Act of 1965 (P.L. 89-234) and subsequent amendments; the Act authorizing the Northeastern Water Supply Study in 1965 (P.L. 89-298); Clean Water Restoration Act of 1966 (P.L. 89-753); Department of Transportation Act of 1966 (P.L. 89-670); Wild and Scenic Rivers Act of 1968 (P.L. 90-542); National Flood Insurance Act of 1968 (Title XIII, P.L. 90-448); Estuary Protection Act of 1968 (P.L. 90-454); National Environmental Policy Act of 1969 (P.L. 91-190); Environmental Quality Improvement Act of 1970 (Title II of P.L. 91-224); Flood Control Act of 1970 (P.L. 91-611).

319. See WRC Agendy Memorandum #2 for April 29, 1969 for a general discussion of the problems posed to the federal government by the Susquehanna Compact and the bills then pending in Congress to consent thereto.

320. P.L. 89-72, 79 Stat. 213.

321. WRC Report, April 1971.

322. *Testimony*, *supra* note 295 at 75-76.

323. *Testimony*, *supra* note 295 at 64-65. Executive Order No. 11646, February 8, 1972, 37 F.R. 2925.

324. P.L. 90-515, 82 Stat. 868.

325. See *Testimony*, *supra* note 295 at 74-75; COR Agenda Memorandum for *February 9, 1972*.

326. 42 U.S.C.A. 1962d.

327. P.L. 92-27, 85 Stat. 77.

328. *Testimony*, *supra* note 295 at 3.

329. Various appropriation acts covering FY 1967 to and including FY 1972 are the following: P.L. 89-689, 89th Cong., October 15, 1966; P.L. 90-147, 90th Cong., November 20, 1967; P.L. 90-479, 90th Cong., August 12, 1968; P.L. 91-144, 91st Cong., December 11, 1969; P.L. 91-439, 91st Cong., October 7, 1970; P.L. 92-134, 92nd Cong., October 5, 1971. The Act amending Section 401 in 1971 is P.L. 92-27, 92d Cong., June 17, 1971 (85 Stat. 77).

330. See *National Land Use Policy Act*, Report of the Committee on Interior and Insular Affairs, United States Senate, together with supplementary reviews to accompany S. 3354, 91st Cong., 2d sess., December 14, 1970, Report No. 91-1435 at 23.

331. *Id.* at 1.

332. *Id.*

333. *Id.* at 33.

334. H.R. 2173 (Meads), H.R. 2449 (Aspinall), H.R. 4332 (Aspinall, by request), H.R. 4337 (Bennett), H.R. 4569 (Kemp), H.R. 4703 (Broomfield), and H.R. 5504 (Hosmer).

303. See 36 F.R. 24151-24152.

304. The material in this section is taken essentially from the proposed principles and standards published in the Federal Register at 36 F.R. 24144 _et seq_.; from the testimony of W. Don Maughan, the Director, before the Appropriations Subcommittee on Public Works on April 22, 1971, _supra_ note 295 at 24-51; from notes of the author on a presentation of W. Don Maughan to the National Water Commission given on November 6, 1970; and from a Water Resources Council News Release of December 21, 1971.

305. 36 F.R. 24146-24147.

306. 18 C.F.R. §704.39(a).

307. S. 2612, 92d Cong., 1st sess. September 29, 1971.

308. Budget Message, January 29, 1968, at 31 and 109.

309. 33 F.R. 19170.

310. _A Unified National Program for Managing Flood Losses -- Communication from the President of the United States, Transmitting a Report of the Task Force on Flood Control Policy_, H. Doc. No. 465, 89th Cong., 2d sess. (August 10, 1966).

311. 31 F.R. 10663-4.

312. P.L. 90-448, 82 Stat. 476.

313. Regulation of Flood Hazard Areas to Reduce Flood Losses, Vol. One, Parts I-IV, Water Resources Council, 1971.

314. 75 Stat. 688.

315. See W.R., December 21, 1968. A copy of the letter of non-concurrence from Secretary Udall to the DRBC is in the files of the Council.

316. A draft of the proposed executive order is in the files of the Council.

317. See, for example, H. J. Res. 381, 91st Cong., 2d sess.

318. 84 Stat. 1509.

335. See H.R. 11896 [Report No. 92-911], 92d Cong., 2d sess., March 11, 1972, §209 at 263.

336. Memoranda for the President of the United States, Establishment of a Department of Natural Resources (May 12, 1970) Organization for Social and Economic Programs (November 19, 1970), released by the White House on February 5, 1971.

337. Id. at 8.

338. Id. at 9.

339. Id. at 27.

340. See Executive Reorganization, Message from the President of the United States Transmitting Proposals for the Reorganization of the Executive Branch of the Government, House of Representatives, 92d Cong., 1st sess., March 25, 1971, H. Doc. No. 92-75.

341. S. 1431, 92d Cong., 1st sess., April 1, 1971.

342. See Papers Relating to the President's Departmental Reorganization Program, a reference compilation, March 1971, at 165-168.

343. Statement of Rogers C. B. Morton, Secretary of the Interior, on S. 1431, to establish the Department of Natural Resources before the Senate Committee on Government Operations, August 5, 1971.

344. Fox, supra note 43 at 50.

345. This is the basic Congressional statement of policy in Section 2 of the Water Resources Planning Act. 42 U.S.C.A. 1962.

346. Fox, supra note 43 at 50.

347. Id. at 51.

348. Seidman, Harold, Politics, Position, & Power, Oxford University Press, New York, 1970 at 164.

349. Water Resources Activities, supra note 45 at 34-35.

350. W.R., April 8, 1968.

351. Seidman, supra note 348 at 167.

352. Water Resources Policy, supra note 112 at 2.

353. Seidman, supra note 348 at 170.

354. Id. at 168.

355. See National Land Use Policy Act, Report of the Committee on Interior and Insular Affairs, Report No. 91-1435, 91st Cong., 2d sess., December 14, 1970 at 34:

> ". . . the Committee acknowledges the administrative shortcomings that have characterized the Water Resources Council. Its duties in the past, while important, have not been sufficiently important to command the consistent attention of its Cabinet-level members. In addition, the Council has tended to become too closely associated with the agency headed by its Chairman, who nevertheless has not been able to devote sufficient time to the job to serve as a dynamic spokesman for the Council. Finally, the Executive Director of the Council has not had sufficient rank or prestige to speak independently for the Council at the policymaking level of the Federal Government."

356. Id.

357. Id.